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**Institute of Oriental Canon Law**

**Dharmaram Vidya Kshetram**

**Dharmaram College, Bangalore 560029, India**

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Email: [vkoluthara@gmail.com](mailto:vkoluthara@gmail.com); [iustitiadvkjjournal@gmail.com](mailto:iustitiadvkjjournal@gmail.com)  
[www.dvk.in](http://www.dvk.in)

# CONSOLIDATION OF ROMAN PRIMACY AND THE DECLINE OF SYNODALITY IN THE SECOND MILLENNIUM UNTIL THE SECOND VATICAN COUNCIL

Paul Pallath\*

## Abstract

In the socio-cultural, political and ecclesiastical context of the second millennium, the primacy of the Roman Pontiff developed into a full, supreme and absolute power of universal jurisdiction, culminating in the promulgation of the dogmas of primacy and infallibility at the First Vatican Council. Because of these developments, episcopal power of governance or jurisdiction came to be seen as a concession of the Roman Pontiff, and metropolitan and patriarchal authority as sharing in his supreme power. Synodality and conciliarity virtually disappeared in the West and decreased considerably in the East.

**Keywords:** Infallibility, Jurisdiction, Patriarch, Roman Primacy, Synodality.

## Introduction

Recently I published an article on primacy and synodality according to the common tradition of the Church in the first millennium, in which I set forth the synergistic balance between primacy and synodality in that epoch that made possible the realisation of the Catholic Church as a communion of the Western and Eastern Churches.<sup>1</sup> As the title suggests, this article is a continuation of the previous study and should be evaluated in light of that study. However, some thoughts are repeated insofar as they are necessary to analyse and understand the

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\* Msgr. Prof. Paul Pallath received his doctorate in Eastern Canon Law from the Pontifical Oriental Institute in Rome and in Latin Canon Law from the Pontifical Lateran University. He is currently Relator of the Dicastery for the Causes of Saints, Associate Professor at the Pontifical Oriental Institute in Rome, Consultor in the Dicastery for the Eastern Churches, Consultor in the Dicastery for Legislative Texts, and Commissioner at the Tribunal of the Roman Rota. He has published 24 books and numerous articles dealing with canonical topics or the history, liturgy and spiritual heritage of the St Thomas Christians in India.

<sup>1</sup> P. Pallath, "Primacy and Synodality according to the Common Tradition of the Church in the First Millennium," in *Iustitia* Vol. 14, No. 1 (June 2023) 9-47.

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situation in the second millennium. This article deals with the relationship between primacy and synodality until the Second Vatican Council, which represents a turning point in the historical development of the same. Since it is impossible to cover the development of primacy comprehensively in such an article, only important events and documents are considered.

### **1. Consolidation of Universal Roman Primacy in the Second Millennium**

The consolidation of Roman primacy in the second millennium may also be evaluated in the particular ecclesiastical context of the period. The Church in the ancient Roman Empire consisted of the five great patriarchates: Rome, Constantinople, Alexandria, Antioch and Jerusalem, according to the order of precedence established by the ecumenical councils. Due to the historical controversies of the first millennium, the communion between the Roman Church and the great patriarchates of the East was interrupted. Finally, the Byzantine Church was also separated with the "Great Schism" in 1054, when the papal delegate Cardinal Humbert of Silva Candida and Patriarch Michael Cerularius promulgated the mutual excommunications.<sup>2</sup>

Since the Great Schism of 1054, the universal Catholic Church consisted only of the Latin Church "with the exception of the little-known Maronite Church, structured like a single eparchy under the governance of the Patriarch, assisted by some titular bishops," and of the Greek and Albanian communities that had found refuge in Italy.<sup>3</sup> In summary, after the Great Schism, the universal Catholic Church could be identified with the Western Latin Church until some fractions of the Orthodox Churches restored communion with the Roman Pontiff and formed the so-called "united churches." This monistic ecclesiastical situation also contributed to the development of monarchical ecclesiology in the West and the universal primacy of papal jurisdiction.

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<sup>2</sup> For details concerning the "Great Schism," P. Schaff, *History of the Christian Church, Volume IV: Mediaeval Christianity, A.D. 590-1073*, Grand Rapids 1882, 190-200; T. Ware, *The Orthodox Church*, Baltimore-Maryland 1964, 51-81; *The Cambridge Medieval History, Volume IV: The Eastern Roman Empire (717-1453)*, Cambridge 1923, 112-115; W. De Vries, *Rom und die Patriarchate des Ostens*, Freiburg-München 1963, 23-31; cf. *Storia della Chiesa VII: l'epoca feudale (888-1057)*, Torino 1953, 132-146.

<sup>3</sup> I. Žužek, *Understanding the Eastern Code*, Roma 1997, 208 and 275; regarding Maronite Church cf. also A. Coussa, *Epitome praelectionum de iure ecclesiastico orientali*, vol. 1, Grottaferrata 1943, 184.

Since the end of the IX century, the history of the Church was marked by frequent conflicts between the emperors of the "Western Holy Roman Empire" (which was re-established towards the end of the VIII century) and the popes. Initially, the Holy Roman Empire seemed to be the necessary counterpart of the Holy Roman Church, and both were seen as the two arms of God governing the Church and the world, spiritual and temporal affairs. Frequently, however, the two powers came into sharpest conflict, including over the right of investiture or supreme control in the election of bishops and abbots. Synods and councils, even deposed popes and elected antipopes with the support of emperors.<sup>4</sup>

### 1.1. Gregorian Reform and the Declaration of Supreme Papal Primacy

The beginning of the development of primacy in the second millennium is inextricably linked to the so-called "Gregorian reform," which began with the election of Pope Gregory VI (1045-1046), culminated with the pontificate of Gregory VII (1073-1085) and was continued by his successors after his death. The popes who governed during this period abolished clerical marriage in the Latin Church, as well as the abuses of lay investiture and simony.<sup>5</sup> The most important aspect of the Gregorian reform, however, is the emphatic affirmation of papal supremacy and infallibility contained in the manuscript *Dictatus Papae* (Papal Dictation), written during the pontificate of Pope Gregory VII in March 1075.<sup>6</sup> The *Dictatus Papae* consists of twenty-seven propositions listing a number of privileges and rights of the Roman Church and the Pope:

- 1) The Roman Church was founded by God alone. 2) The Roman Pontiff alone can rightly be called universal. 3) He alone can depose

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<sup>4</sup> Cf. P. Schaff, *History of the Christian Church, Volume IV*, 160-167, 179-190; H. Jedin and J. Dolan (ed.), *History of the Church, Volume III: The Church in the Age of Feudalism*, New York 1982, 84-102, 151-157, 247-251.

<sup>5</sup> Cf. G. H. Tavard, "The Papacy in the Middle Ages," in P. C. Empie and T. A. Murphy, *Papal Primacy and the Universal Church*, Minnesota 1974, 101; *The Cambridge History of Christianity: Early Medieval Christianities, c. 600–c. 1100* (edited by Thomas F. X. Noble and Julia M. H. Smith), Cambridge 2008, 361-362. For details concerning the Gregorian reform: P. Schaff, *History of the Christian Church, Volume V: the Middle Ages, A.D. 1049-1294*, Grand Rapids 1882, 17-40; *Storia della Chiesa VIII: La riforma Gregoriana e la riconquista cristiana (1057-1123)*, Torino 1959; H. Jedin and J. Dolan (ed.), *History of the Church, Volume III*, 351-403.

<sup>6</sup> Cf. C. Balzareti, "Il *Dictatus papae*: un mito scolastico," in *Nuova secondaria* 34/10 (2017) 60-62; G. Langevin, "Synthèse de la tradition doctrinale sur la primauté du successeur de Pierre durant le second Millénaire," in *Il primato del successore di Pietro*, Città del Vaticano 1998, 148-149.

or reinstate bishops. 4) His legate, even if of a lower rank, is above all bishops in a council, and he can render a sentence of deposition against them. 5) The Pope can depose absent bishops (from a council). 6) Among other things, one should not stay in the same house with those excommunicated by him. 7) It is for him (the Pope) alone to make new laws according to the needs of the time, to assemble new congregations, to make an abbey out of a canonry, and on the other hand to divide a rich bishopric and unite the poor ones. 8) He alone may use the imperial insignia. 9) All princes shall kiss the Pope's feet only. 10) His name alone shall be pronounced in the churches. 11) His title is unique in the world. 12) He may be permitted to depose emperors. 13) He may be permitted to transfer bishops if necessary. 14) He has the power to ordain a cleric of any church he wishes. 15) One ordained by the Pope may preside over another church but may not hold a subordinate office; such a one may not receive a higher clerical rank from any other bishop. 16) No synod shall be called "general" without his order. 17) No chapter or book shall be considered canonical without his authority. 18) No judgement rendered by him may be revoked by anyone; he alone can revoke it. 19) He himself shall not be judged by anyone. 20) Let no one dare condemn anyone who appeals to the Apostolic See. 21) To it shall be referred the more important cases of each church. 22) The Roman Church has never erred and will not err for all eternity, as the Holy Scripture testifies. 23) The Roman Pontiff, if canonically elected, is undoubtedly made holy by the merits of St. Peter [...]. 24) At his command and with his consent, subordinates may be permitted to bring accusations. 25) He may depose and reinstate bishops without convening a synod. 26) The one who is not at peace with the Roman Church shall not be considered Catholic. 27) He may absolve subjects from their fealty to wicked people.<sup>7</sup>

The principles expressed in the *Dictatus Papae* manifest the essence and spirit of the Gregorian reform. The propositions of the *Dictatus* aim to establish absolute papal supremacy. The balance between the secular power (the Empire) and the spiritual authority (the Church) had dominated the West in the first millennium. The axiom allowing the Pope to depose emperors destroys the early medieval notion of balance between religious power and civil powers, expressed by the symbol of

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<sup>7</sup> Archivio Apostolico Vaticano, *Registrum Vaticanum* 2, fol. 80v-81; photo-reproduction of the original Latin text in *Enciclopedia dei Papi*, vol. 2, (Roma) 2000, 194; also in *Storia della Chiesa* VIII, tovola VI; printed Latin text in Mansi 20, 168-169; English translation is based on F. Henderson, *Select Historical Documents of the Middle Ages*, London 1910, 366- 367.

the "two swords," spiritual and secular. Before the Gregorian reforms, the Church was a decentralized institution, and until the twelfth century, the Bishop of Rome had little authority over the other bishops.<sup>8</sup> About Gregorian reform, the International Theological Commission made the following remarkable statement:

In the Catholic Church, the Gregorian reform and the struggle for the *libertas Ecclesiae* contributed to the affirmation of the Pope's authority as primate. On the one hand, this freed Bishops from subordination to the Emperor but, on the other hand, if not properly understood, it ran the risk of weakening the identity of local Churches.<sup>9</sup>

The main theological and canonical doctrines of papal authority that developed in the second millennium are already contained in the propositions of *Dictatus Papae*, which guided the Gregorian reforms: the papal primacy of universal jurisdiction, his personal infallibility, the power to depose and reinstate bishops and emperors, immunity from all judgement, authority over councils, and the right to divide or unite dioceses.

## 1.2. Gregory X and the Second Council of Lyons (1272)

Pope Gregory X (1272-1276) convoked the Second Council of Lyons on 31 March 1272 mainly to achieve a reunion with the Greek (Byzantine) Church, in order to strengthen the Church in the context of the conflicts with the German emperors. In fact, the Pope wanted to make a treaty with the Byzantine Emperor Michael VIII Palaeologus and unite the Greek and Latin Churches. The Council, which officially opened on 7 May 1274, held six general sessions. In the fourth session of the council (16-17 July 1272), the union between the Eastern Church and the Latin Church was decided and established, the union being based on the consent of the Greeks to the claims of the Roman Church. The union seems to have been forced by Emperor Michael on the Greek side for his political advantage and failed because the vast majority of the Byzantine population rejected it.<sup>10</sup> At the fourth session of the Council, the profession of faith prescribed by the Pope and signed by Emperor

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<sup>8</sup> Cf. A. Dulles, *The Catholicity of the Church*, Oxford 1987, 131 and 135-136.

<sup>9</sup> International Theological Commission, *Synodality in the Life and Mission of the Church*, Rome 2018, no. 32.

<sup>10</sup> Cf. *Decrees of the Ecumenical Councils*, edited by N. P. Tanner, vol. 1, London 1990, 303-305; *Storia della Chiesa X: La cristianità romana (1198-1274)*, Torino 1968, 637-649; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV: From the High Middle Ages to the Eve of the Reformation*, New York 1982, 203-207; W. De Vries, *Rom und die Patriarchate des Ostens*, 47-52.

Michael was read, containing the affirmation of universal Roman primacy as understood in the West at the beginning of the second millennium. The relevant part of the text follows:

The same holy Roman Church, then, possesses the supreme and full primacy and dominion over the whole Catholic Church; and she acknowledges in truth and humility that she received this primacy with full power from the Lord himself, in blessed Peter, the prince or rather head of the Apostles, whose successor is the Roman Pontiff. And just as she (the Roman Church) is obliged to defend the truth of the faith before all others, so also the questions that arise concerning the faith must be settled with her judgment. Anyone who finds himself in difficulty in matters belonging to the ecclesiastical sphere may appeal to her and may invoke her judgment in all cases involving ecclesiastical judgment. All the Churches are subject to her, and their prelates show her obedience and reverence. The fullness of power is thus realized in the Roman Church in such a way that she makes all other churches share in her solicitude; the same Roman Church has honoured many churches, especially the patriarchal churches, with various privileges, while always preserving her prerogatives untouched, both in general councils and in some other matters.<sup>11</sup>

The profession of faith that Emperor Michael VIII Palaeologus was forced to make reflects many of the propositions contained in the *Dictatus Papae* already cited. It clearly affirms the fullness of papal power, the subjection of all churches to the Roman Church and the papal primacy of jurisdiction. Consequently, patriarchal power is considered as sharing in the solicitude of the Roman Church and patriarchal powers as conceding privileges.

### 1.3. Pope Boniface VIII and the Bull *Unam Sanctam* (1302)

The belief of Pope Boniface VIII (1294-1303) in papal supremacy brought him into frequent conflict with secular rulers and divided Europe into factions that either supported papal supremacy or favoured the separation of church and state. The most important conflict was between Pope Boniface and the centralist monarch Philip IV the Fair of France (1285-1314) over control of Church revenues and authority over the clergy in France. To bolster his opposition to the papacy, Philip convened an assembly or 'French Parliament' of the three estates in Paris in April 1302, inviting the clergy, nobility, and

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<sup>11</sup> *Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum*, H. Denzinger (ed.), edizione bilingue a cura di P. Hünemann, Bologna 1996, n. 861; Mansi 24, 71-74.



representatives of the wealthiest cities. The body expressed support for the king, rejected the papal claim to supremacy, and affirmed the independence of the crown from the Church.<sup>12</sup> To counter the king's pretext, Pope Boniface VIII issued the bull *Unam Sanctam* on 18 November 1302, in which he explained and justified the superiority of papal authority over that of the king, referring, among other things, to the theory of the two swords. Given the great importance of this document for the consolidation of the primacy in the second millennium, it is reproduced in full.

Boniface, Bishop, Servant of the servants of God. For perpetual remembrance

Urged by faith, we are obliged to believe and to maintain that there is only one, holy, catholic and also apostolic Church. We believe in her firmly and we confess with simplicity that outside of her there is neither salvation nor the remission of sins, as the Spouse in the Canticles (*Song* 6:9) proclaims: 'My dove, my perfect one, is the only one, the darling of her mother, flawless to her that bore her,' and she represents one sole mystical body whose Head is Christ and God is the head of Christ (1 *Cor* 11:3). In her then is one Lord, one faith, one baptism (*Eph* 4:5). There had been at the time of the deluge only one ark of Noah, prefiguring the one Church, which ark, having been finished to a single cubit, had only one pilot and guide, namely Noah, and we read that, outside of this ark, all that subsisted on the earth was destroyed.

We venerate this Church as one, the Lord having said by the mouth of the prophet: O Lord, 'Deliver my soul from the sword and my life from the power of the dog' (*Ps* 22:20). He has prayed for his soul, that is for himself, heart and body; and this body, that is to say, the Church, he has called one because of the unity of the Spouse, of the faith, of the sacraments, and the charity of the Church. This is the tunic of the Lord, the seamless tunic, which was not torn but which was cast by lot (*Jn* 19:23-24). Therefore, of the one and only Church, there is one body and one head, not two heads like a monster; that is, Christ and the Vicar of Christ, Peter and the successor of Peter, since the Lord speaking to Peter himself said: 'Tend my sheep' (*Jn* 21:17), meaning, my sheep in general, not these, nor those in particular, whence we understand that he entrusted all to him (Peter). Therefore, if the Greeks or others should say that they are not confided to Peter and

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<sup>12</sup> Cf. P. Schaff, *History of the Christian Church, Volume VI: the Middle Ages, A.D. 1294-1517*, Grand Rapids 1882, 12-14; *Storia della Chiesa XI: La crisi del Trecento e il papato avignonese (1274-1378)*, Cinisello Balsamo 1994, 148-164.

his successors, they must confess not being the sheep of Christ, since Our Lord says in John there is 'one flock and one shepherd' (*Jn* 10:16). We are informed by the texts of the gospels that in this Church and its power are two swords; namely, the spiritual and the temporal. For when the Apostles say: 'Look, there are two swords' (*Lk* 22:38) that is to say, in the Church, since the Apostles were speaking, the Lord did not reply that there were too many, but sufficient. Certainly, the one who denies that the temporal sword is in the power of Peter has not listened well to the word of the Lord commanding: 'Put your sword back into its place' (*Mt* 26:52). Both, therefore, are in the power of the Church, the spiritual and the material sword, but the former is to be administered *for* the Church but the latter *by* the Church; the former in the hands of the priest; the latter by the hands of kings and soldiers, but at the will and sufferance of the priest.

However, one sword ought to be subordinated to the other and temporal authority, subjected to spiritual power. For since the Apostle said: 'There is no authority except from God, and those authorities that exist have been instituted by God' (*Rom* 13:1-2], but they would not be ordained if one sword were not subordinated to the other and if the inferior one, as it were, were not led upwards by the other.

For, according to the Blessed Dionysius, it is a law of the divinity that the lowest things reach the highest place by intermediaries. Then, according to the order of the universe, all things are not led back to order equally and immediately, but the lowest by the intermediary, and the inferior by the superior. Hence, we must recognize more clearly that spiritual power surpasses in dignity and nobility any temporal power whatever, as spiritual things surpass the temporal. We also see this very clearly by the payment, benediction, and consecration of the tithes, but the acceptance of power itself and the government even of things. For, with truth as our witness, it belongs to spiritual power to establish the terrestrial power and to pass judgement if it has not been good. Thus, the prophecy of Jeremias concerning the Church and the ecclesiastical power is accomplished: 'See, today I appoint you over nations and over kingdoms' (*Jer* 1:10) and the rest. Therefore, if the terrestrial power errs, it will be judged by the spiritual power; but if a minor spiritual power errs, it will be judged by a superior spiritual power; but if the highest power of all err, it can be judged only by God, and not by man, according to the testimony of the Apostle: The spiritual man judges all things, and he himself is not judged by anyone (cf. *1 Cor* 2:15]. This authority, however, (though it has been given to man and is exercised by man), is not human but rather divine, granted to Peter by a divine word and

reaffirmed to him (Peter) and his successors by the One Whom Peter confessed, the Lord said to Peter himself, 'Whatsoever you bind on earth, will be bound also in Heaven' etc., (Mt 16:19). Therefore, whoever resists this power thus ordained by God, resists the ordinance of God (cf. *Rom* 13:2], unless he invents like Manicheus two beginnings, which is false and judged by us heretical, since according to the testimony of Moses, it is not in the beginnings but in the beginning that God created heaven and earth (cf. *Gen* 1:1). Furthermore, we declare, we proclaim, we define that it is necessary for salvation that every human creature be subject to the Roman Pontiff.<sup>13</sup>

Referring to some biblical passages and interpreting them, Pope Boniface VIII emphasised that there is only one Church and one head, namely the Pope, who is not only the successor of St Peter, as he was generally regarded in the first millennium, but also the Vicar of Christ himself. Therefore, anyone who does not accept the Pope cannot belong to Christ's Church and cannot be saved. In the first millennium, the theory of "two swords" was generally held, which meant a balance between the spiritual power of the Pope and the temporal power exercised by the emperor. According to Boniface VIII, both "swords" are entrusted to the Pope, so emperors and kings are also subject to papal authority. He believed that all authority comes from God and that the Pope, as the Vicar of Christ, is the supreme embodiment of his will on earth. Emperors and kings derived their right to rule from God and thus from the Pope, to whom every person should also be subject for eternal salvation. In summary, the main purpose of the bull was to establish papal supremacy over emperors and secular rulers who were often in opposition to the Pope.

#### **1.4. Western Schism, Council of Constance and the Decline of Papal Primacy (1378-1417)**

Boniface VIII was succeeded by Pope Benedict XI (1303-1304), who adopted a conciliatory attitude towards King Philip the Fair of France. After the death of Benedict XI, with the election of the French Pope Clement V (1305-1314) began the Avignon papacy which lasted more than 70 years and included seven French popes: already mentioned

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<sup>13</sup> Boniface VIII, Bull *Unam Sanctam*, in *Enchiridion symbolorum*, nn. 870-875; all biblical citations are taken from *New Revised Standard Version*. Latin text and a slightly different English translation are found also in P. Schaff, *History of the Christian Church*, Volume VI, 17-20. For the biographical profile of Pope Boniface VIII: *Enciclopedia dei Papi*, vol. 2, 472-493.

Clement V, John XXII (1316-1334), Benedict XII (1334-1342), Clement VI (1342-1352), Innocent VI (1352-1362), Urban V (1362-1370) and Gregory XI (1370-1378).<sup>14</sup> The last Avignon Pope Gregory XI, constrained by various political and ecclesiastical circumstances, returned to Rome on 16 December 1377 but died on 27 March 1378.<sup>15</sup>

After the death of Pope Gregory XI, the college of cardinals (Roman and Avignon groups) elected two popes in succession: Urban VI and Clement VII, and both had successors. Urban remained in Rome while Clement moved to Avignon, and each established his own papal court and college of cardinals. Thus, originated what is known in history as the Western Schism or Papal Schism (1378-1417) between rival popes based in Rome and Avignon.<sup>16</sup> The list of popes of the Roman and Avignon lines is given below:

### **Roman Line**

Urban VI (1378-1389)

Boniface IX (1389-1404).

Innocent VII (1404-1406)

Gregory XII (1406-1415)<sup>17</sup>

### **Avignon Line**

Clement VII (1378-1394)

Benedict XIII (1394-1409).

In response to the Western schism, the theory of conciliarism emerged, a reform movement (centuries XIV-XVI) that assumed that the supreme authority in the Church was the Ecumenical Council, apart from or even opposed to the Pope.<sup>18</sup> In fact, to settle the schism of the popes, the Council of Pisa was convened in 1409, with the participation of several cardinals, bishops, abbots, superiors general of religious orders,

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<sup>14</sup> P. Schaff, *History of the Christian Church, Volume VI*, 28-59; *Storia della Chiesa XI*, 234-306; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 291-330; L. Pastor, *Storia dei Papi*, vol. 1, Roma 1942, 5-112; *Enciclopedia dei Papi*, vol. 2, 501-561; cf. also *Annuario Pontificio* 2023, 16\*-17\*.

<sup>15</sup> P. Schaff, *History of the Christian Church, Volume VI*, 60-62; *Storia della Chiesa XI*, 307-310; L. Pastor, *Storia dei Papi*, vol. 1, 112-117.

<sup>16</sup> P. Schaff, *History of the Christian Church, Volume VI*, 67-69; *Storia della Chiesa XIV/1: La Chiesa al tempo del grande scisma e della crisi conciliare (1378-1449)*, Torino 1967, 32-78; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 401-416; L. Pastor, *Storia dei Papi*, vol. 1, 118-182.

<sup>17</sup> The official list indicates the popes of the Roman line as legitimate ones and those of the Avignon line as antipopes. Cf. *Annuario Pontificio* 2023, 17\*; cf. also *Enciclopedia dei Papi*, vol. 2, 593-609.

<sup>18</sup> Cf. *Decrees of the Ecumenical Councils*, vol. I, 405, 407; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 423-425; *Dictionnaire de Théologie Catholique*, Tome III, Paris 1908, 604.

theologians and canonists. The Council deposed the rival popes Gregory XII and Benedict XIII and elected a third, Alexander V (1409-1410), who was succeeded by John XXIII (1410-1415).<sup>19</sup> The deposition of the two aforementioned popes had no legal effect, so since the Council of Pisa there were three popes who claimed to be the legitimate successor of St Peter.

In this tragic situation of schism and division, the Pisan Pope John XXIII announced the Council of Constance (a city in Germany) on 5 November 1414, with the support of Sigismund, the German King and Holy Roman Emperor (from 1433 until his death in 1437). The aim of the Council of Constance, which lasted about five years (1414-1418), was to eliminate the schism, and to unify and reform the Church.<sup>20</sup>

As already indicated, the Western Church was divided into three factions under three different popes at the opening of the Council of Constance: some Christians owed obedience to Gregory XII of the Roman party, others to Benedict XIII of the Avignonese party, and still others to the Pisan Pope John XXIII. The Council caused the renunciation of both the Roman Pope Gregory XII and the Pisan antipope John XXIII and deposed the Avignonese antipope Benedict XIII. On 11 November 1417, Martin V was elected Pope, ruling from Rome. He was recognised by all as the rightful Pope, and thus ended the Western Schism.<sup>21</sup>

From the historical facts described above, it is clear that the principle of conciliarity (conciliarism) reached its peak at the Council of Constance, which even forced two popes to resign, deposed one and elected another. Moreover, in connection with several claimants to the papal throne, the Council explicitly asserted its supremacy even over the Pope as follows:

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<sup>19</sup> P. Schaff, *History of the Christian Church, Volume VI*, 77-81; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 417-423; *Storia della Chiesa XIV/1*, 207-115; L. Pastor, *Storia dei Papi*, vol. 1, 186-201; Mansi 27, 358-366. Obviously the Pisan popes Alexander V and John XXIII are also considered antipopes: cf. *Annuario Pontificio* 2023, 17\*; *Enciclopedia dei Papi*, vol. 2, 610-618.

<sup>20</sup> P. Schaff, *History of the Christian Church, Volume VI*, 82-92; *Storia della Chiesa XIV/1*, 216-242.

<sup>21</sup> Cf. *Decrees of the Ecumenical Councils*, vol. I, 403; P. Schaff, *History of the Christian Church, Volume VI*, 93; *Storia della Chiesa XIV/1*, 245-276; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 448-473; L. Pastor, *Storia dei Papi*, vol. 1, 204-216; all the acts, decrees and decisions of the council in Mansi 27, 529-1240.

First it declares that, legitimately assembled in the holy Spirit, constituting a general council and representing the catholic church militant, it has power immediately from Christ; and that everyone of whatever state or dignity, even papal, is bound to obey it in those matters which pertain to the faith, the eradication of the said schism and the general reform of the said church of God in head and members.<sup>22</sup>

Another important decree of the Council, known in history as *Frequens*, was promulgated on 9 October 1417. It proposed the frequent convocation of councils to govern the universal Church and to resolve any eventual papal schism. The decree states:

The frequent holding of general councils is a pre-eminent means of cultivating the Lord's patrimony. It roots out the briars, thorns and thistles of heresies, errors and schisms, corrects deviations, reforms what is deformed and produces a richly fertile crop for the Lord's vineyard. Neglect of councils, on the other hand, spreads and fosters the aforesaid evils. [...] For this reason we establish, enact, decree and ordain, by a perpetual edict, that general councils shall be held henceforth [...].<sup>23</sup>

The obligatory convocation of a general council was proposed as the only solution to eradicate a possible future schism, so that "two or more persons claim to be supreme pontiffs."<sup>24</sup> In addition, the Council prescribed the Pope-elect to make a profession of faith before his electors prior to the publication of the election, which included the explicit recognition of the councils:

[...] I will firmly believe and hold the catholic faith, according to the traditions of the apostles, of the general councils and of the other holy fathers, especially of the eight holy universal councils [...] as well as of the general councils at the Lateran, Lyons and Vienne, and I will preserve this faith unchanged to the last dot and will confirm, defend and preach to the point of death and the shedding of my blood [...].<sup>25</sup>

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<sup>22</sup> Council of Constance, sessions 5 (6 April 1415), Decree *Haec sancta*, in *Decrees of the Ecumenical Councils*, vol. I, 409; *Conciliorum oecumenicorum decreta*, a cura di Giuseppe Alberigo e altri (edizione bilingue), Bologna 2002, 409; Mansi 27, 590.

<sup>23</sup> Council of Constance, session 39 (9 October 1417), in *Decrees of the Ecumenical Councils*, vol. I, 438-439; *Conciliorum oecumenicorum decreta*, 438-439; Mansi 27, 1159.

<sup>24</sup> Council of Constance, session 39 (9 October 1417), in *Decrees of the Ecumenical Councils*, vol. I, 439-440; *Conciliorum oecumenicorum decreta*, 439; Mansi 27, 1159-1160.

<sup>25</sup> Council of Constance, session 39 (9 October 1417), in *Decrees of the Ecumenical Councils*, vol. I, 442; *Conciliorum oecumenicorum decreta*, 442; Mansi 27, 1161-1162.

In this way, the Council of Constance established the supreme principle of conciliarity, according to which even the Roman Pontiff is subject to the Ecumenical or General Council. Norman P. Tanner observes that objection has been made to the decrees defining the power of the Councils "on the grounds of the primacy of the Roman Pontiff. There is no doubt, however, that in enacting these decrees, there was solicitude and care to choose the true and sure way ahead in order to heal the schism, and this could only be done by the authority of a council."<sup>26</sup> Even the International Theological Commission admits:

At the end of the Middle Ages, a unique situation came about in the Western Schism (1378-1417), when there were simultaneously two, and later three, people claiming the title of Pope. The Council of Konstanz (1414-1418) solved this intricate question by applying emergency canon law foreseen in medieval canonical thinking, and went on to elect the legitimate Pope. In this situation, however, the conciliarist idea developed, whose aim was to impose a permanent council over and above the primatial authority of the Pope. The theological justification and practical application of conciliarism would be judged not to be in conformity with Tradition [...].<sup>27</sup>

Even though the Council of Constance gave rise to the theory of conciliarism, it terminated the schism of three popes and re-established unity, communion and harmony in the Church.

### **1.5. Council of Florence and the Definition of Papal Primacy (1439)**

This Council is entitled Basel-Ferrara-Florence-Rome because it was opened in the Swiss city of Basel on 25 July 1431, by the papal legate appointed by Pope Martin V shortly before his death on 20 February 1431, and after being moved to the Italian cities of Ferrara and Florence by his successor, Pope Eugenius IV (1431-1447), it was concluded in Rome on 7 August 1445. The Council of Basel was marked by bitter conflicts between most of the participants and Pope Eugenius, who moved the Council to Ferrara (1438) and then to Florence (1439) against the former's will, also to facilitate the participation of the Eastern Churches.<sup>28</sup>

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<sup>26</sup> *Decrees of the Ecumenical Councils*, vol. I, 403.

<sup>27</sup> International Theological Commission, *Synodality in the Life and Mission of the Church*, no. 34.

<sup>28</sup> *Decrees of the Ecumenical Councils*, vol. I, 453; N. P. Tanner, *The Councils of the Church: A Short History*, 71; J. Gill, *The Council of Florence*, Cambridge 1959, 46-108; *Dictionnaire de Théologie Catholique*, Tome II, Paris 1905, 113-129; Tome VI, Paris 1920, 24-50. For documentation: Mansi, volumes 29-32; G. Hofmann (ed.), *Concilium*

The Byzantine Greek bishops and theologians attended the Council of Ferrara since 9 April 1438. The Byzantine delegation was headed by Emperor John VIII Palaeologus and Patriarch John of Constantinople, although the Patriarch died before the signing of the union. Emperor John VIII was eager for a settlement with the Western Church, in order to obtain military aid against the Turkish invaders, while Pope Eugenius looked for the support of the Eastern Churches against the “rebellious Council of Basel” which continued even after the official transfer (last session in 1449).<sup>29</sup> Because of the outbreak of plague, the Council was transferred to Florence on 10 January 1439, where the decree of union with the Greek Church, known as *Letentur caeli* was approved in the session of 6 July 1439. Pope Eugenius IV promulgated the decree with “the agreement of our most dear son John Palaeologus, illustrious emperor of the Romans, of the deputies of our venerable brothers, the patriarchs and other representatives of the eastern Church.”<sup>30</sup> Among other things, agreement was also reached on the primacy of the Roman Pontiff, as the decree attests:

We also define that the holy Apostolic See and the Roman Pontiff holds the primacy over the whole world and the Roman Pontiff is the successor of blessed Peter prince of the apostles, and that he is the true vicar of Christ, the head of the whole church and the father and teacher of all Christians, and to him was committed in blessed Peter the full power of tending, ruling and governing the whole church, as is contained also in the acts of ecumenical councils and in the sacred canons.<sup>31</sup>

The doctrine of Pope’s universal primacy of full power, as taught in the West during the second millennium, is inserted in the decree, but with the phrase “as is contained also in the acts of ecumenical councils and in the sacred canons,” perhaps to satisfy the Eastern Christians. This statement seems to indicate that the primacy would be exercised in accordance with the acts of the ecumenical councils and the sacred canons of the first millennium. As the agreements on reunion with other Eastern Churches reached the Council of Florence, the decree on

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*Florentinum documenta et scriptores* (Pontificium Institutum Orientalium Studiorum), Romae 1940.

<sup>29</sup> N. P. Tanner, *The Councils of the Church: A Short History*, 72; J. Gill, *The Council of Florence*, 109-115.

<sup>30</sup> Eugenius IV, decree or bull *Letentur Caeli*, in *Decrees of the Ecumenical Councils*, vol. I, 523-528; *Conciliorum oecumenicorum decreta*, 523-528.

<sup>31</sup> *Decrees of the Ecumenical Councils*, vol. I, 528; *Conciliorum oecumenicorum decreta*, 528.



reunion with the Greek Byzantine Church failed, but the agreement on dogmatic and disciplinary issues provided a solid foundation for further discussion and future reunions.<sup>32</sup>

### 1.6. The Fifth Lateran Council (1512-1517) and Further Consolidation of Papal Primacy

Since the popes refused to convoke general councils by the provisions of the Council of Constance on the frequent convocation of councils, some cardinals, officially supported by Louis XII, King of France, had assembled a quasi-Council at Pisa in May 1511, which purported to implement these provisions.<sup>33</sup> Pope Julius II (1503-1513) then convened the Fifth Lateran Council (1512-1517) to condemn and reject the "schismatic" Council of Pisa. There were twelve sessions, five of which were held during the pontificate of Pope Julius II. After his death on 21 February 1513 the remaining seven sessions were held after the election of his successor, Pope Leo X (1513-1521), with three main goals: 1) achieving general peace among Christian rulers; 2) Church reform; and 3) defending the faith and eradicating heresy.<sup>34</sup>

In the eleventh session of the Council held on 19 December 1516, Pope Leo X promulgated the bull *Pastor aeternus* "with the approval of the council," which is very important for the consolidation of the universal primacy of Rome. The bull states that when Jesus "was about to depart from the world to the Father, he established Peter and his successors as his own representatives on the firmness of a rock. It is necessary to obey them, as the Book of Kings testifies (*Dt* 17, 12), so that whoever does not obey, incurs death."<sup>35</sup> In the bull, the Pope also affirmed the authority of the Roman Pontiff over the Council: "[...] it is clearly established that only the contemporary Roman Pontiff, as holding authority over all councils, has the full right and power to summon,

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<sup>32</sup> *Decrees of the Ecumenical Councils*, vol. I, 453; N. P. Tanner, *The Councils of the Church: A Short History*, 72; J. Gill, *The Council of Florence*, 349-387.

<sup>33</sup> Cf. *Storia della Chiesa XV: La Chiesa e il rinascimento (1449-1517)*, Torino 1963, 212-215; F. X. Kraus, "Medicean Rome," in A. W. Ward, G. W. Prothero and S. M. Leathes (ed.), *The Cambridge Modern History*, Volume 2, Macmillan 1907, 29; *Storia dei Papi*, vol. III, Roma 1932, 776-777 & 787.

<sup>34</sup> Cf. *Decrees of the Ecumenical Councils*, vol. I, 593-594; F. X. Kraus, "Medicean Rome," 30-31; *Storia della Chiesa XV*, 220-222, 253-255; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 557-565.

<sup>35</sup> Fifth Lateran Council, bull *Pastor aeternus*, in *Decrees of the Ecumenical Councils*, vol. I, 640; *Conciliorum oecumenicorum decreta*, 640.

transfer and dissolve councils.”<sup>36</sup> Then, the Pope confirmed the bull of Pope Boniface VIII concerning papal supremacy and the necessity of subjection to the Roman Pontiff for salvation as follows:

[...] Moreover, since subjection to the Roman Pontiff is necessary for salvation for all Christ’s faithful, as we are taught by the testimony of both sacred scripture and the holy fathers, and as is declared by the constitution of Pope Boniface VIII of happy memory, also our predecessor, which begins *Unam sanctam*, we therefore, with the approval of the present sacred council, for the salvation of the souls of the same faithful, for the supreme authority of the Roman Pontiff and of this holy see, and for the unity and power of the church, his spouse, renew and give approval to that constitution [...].<sup>37</sup>

In brief, with the Fifth Lateran Council, the theory of conciliarism ended, and the supreme authority of the Pope over the universal Church was reinstated.

### **1.7. The First Vatican Council and the Promulgation of the Dogmas of Papal Primacy and Infallibility (1870)**

The First Vatican Council was summoned by Pope Pius IX on 29 June 1868: the first session was held in St Peter’s Basilica on 8 December 1869. In the three following sessions, only two constitutions were discussed and approved: the *Dogmatic Constitution on the Catholic Faith (Dei Filius)* and the *First Dogmatic Constitution on the Church of Christ (Pastor Aeternus)*. The latter constitution defined and proclaimed the universal primacy of jurisdiction and the infallibility of the Roman Pontiff, both issues of great importance not only for the Catholic Church but also for Churches and communities not in full communion with Rome in view of ecumenism. The outbreak of the Franco-Prussian War (1870-1871) led to an early interruption of the Council. It was never resumed and never officially closed.<sup>38</sup>

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<sup>36</sup> Fifth Lateran Council, bull *Pastor aeternus*, in *Decrees of the Ecumenical Councils*, vol. I, 642; *Conciliorum oecumenicorum decreta*, 642.

<sup>37</sup> Fifth Lateran Council, bull *Pastor aeternus*, in *Decrees of the Ecumenical Councils*, vol. I, 643-644; *Conciliorum oecumenicorum decreta*, 643-644.

<sup>38</sup> *Decrees of the Ecumenical Councils*, vol. 2, 801-816; N. P. Tanner, *The Councils of the Church: A Short History*, New York 2001, 87-96; H. Jedin, *Ecumenical Councils of the Catholic Church: An Historical Outline*, New York 1960, 190-226; J. F. Kelly, *The Ecumenical Councils of the Catholic Church: A History*, Minnesota 2009, 149-173; G. Martina, *Pio IX (1867-1878)*, Roma 1990, 111-232; *Dictionnaire de Théologie Catholique*, Tome XV, Paris 1950, 2536-2585. For documentation on the First Vatican Council: Mansi, volumes 49-53; E. Cecconi, *Storia del Concilio Ecumenico Vaticano ascritta sui documenti originali*, voll. 2 (4 tomi), Firenze 1873-1879.

In the First Dogmatic Constitution on the Church of Christ (*Pastor Aeternus*) the First Vatican Council (1869-1870) defined the primacy of jurisdiction and the infallible teaching authority of the Roman Pontiff, both of which crowned the development of universal monarchical primacy of jurisdiction. The Council taught that to the Roman Pontiff, "in blessed Peter, full power has been given by our Lord Jesus Christ to tend, rule and govern the universal Church." Then the Council goes on to declare:

Wherefore we teach and declare that, by divine ordinance, the Roman Church possesses a pre-eminence of ordinary power over every other church, and that this jurisdictional power of the Roman Pontiff is both episcopal and immediate. Both clergy and faithful, of whatever rite and dignity, both singly and collectively, are bound to submit to this power by the duty of hierarchical subordination and true obedience, and this not only in matters concerning faith and morals but also in those which regard the discipline and government of the Church throughout the world [...].<sup>39</sup>

Then a strongly worded ex-communication was also promulgated, which after reiterating the dogmatic definition mentioned, stipulates: "If anyone says that the Roman Pontiff has merely an office of supervision and guidance, and not the full and supreme power of jurisdiction over the whole church, and this not only in matters of faith and morals, but also in those which concern the discipline and government of the church dispersed throughout the whole world; or that he has only the principal part, but not the absolute fullness, of this supreme power; or that this power of his is not ordinary and immediate both overall and each of the churches and overall and each of the pastors and faithful: let him be anathema."<sup>40</sup> From the dogmatic statement and the anathema, it is evident that the Roman Pontiff's jurisdictional power was episcopal, ordinary, immediate, supreme, absolutely full, and universal over all churches, bishops, pastors and other faithful. Although the dioceses are governed by bishops, the Roman Pontiff also has full episcopal power over each of them.

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<sup>39</sup> Vatican I, Session 4 of 18 July 1870, constitution *Pastor aeternus*, chapter 3, in *Decrees of the Ecumenical Councils*, N. P. Tanner (ed.), vol. 2, London 1990, 814; *Conciliorum oecumenicorum decreta*, 813-814. For interpretation and analysis: U. Betti, *La Costituzione dogmatica Pastor Aeternus del Concilio Vaticano I*, Roma 1961; W. Kasper, "Primat und Episkopat nach dem Vatikanum I," in *Theologische Quartalschrift* 142 (1962) 47-85.

<sup>40</sup> Vatican I, Session 4 of 18 July 1870, constitution *Pastor aeternus*, chapter 3, in *Decrees of the Ecumenical Councils*, vol. 2, 814-815; *Conciliorum oecumenicorum decreta*, 814.

The doctrine of the primacy of Peter, attested by the New Testament, handed down by the patristic tradition and recognised by the ecumenical councils of the first millennium, was defined as the supreme power of jurisdiction by various general or ecumenical councils of the second millennium. Vatican I definitively formulated it as dogma, adding some qualifications that precisely define the nature of papal power as ordinary, episcopal and immediate. Thus, the real novelty of the First Vatican Council was the definition of the dogma of the personal infallibility of the Pope, which was fiercely debated and discussed at the Council by the majority, supported by Pope Pius IX, who wanted to extend it to all the teachings of the Pope, and the minority, who preferred an “ecclesial infallibility” limited to official definitions *ex-cathedra*. Finally, the dogma of infallibility was adopted with the positive votes of the great majority of the Fathers.<sup>41</sup> The definition of the personal infallibility of the Pope contained in the First Dogmatic Constitution on the Church of Christ (*Pastor aeternus*) reads as follows:

[...] with the approval of the sacred council, we teach and define as a divinely revealed dogma that when the Roman Pontiff speaks *ex cathedra*, that is, when, in the exercise of his office as shepherd and teacher of all Christians, in virtue of his supreme apostolic authority, he defines a doctrine concerning faith or morals to be held by the whole church, he possesses, by the divine assistance, promised to him in blessed Peter, that infallibility which the divine Redeemer willed his church to enjoy in defining doctrine concerning faith or morals. Therefore, such definitions of the Roman Pontiff are of themselves, and not by the consent of the church, irremediable.

So then, should anyone, which God forbid, have the temerity to reject this definition of ours: let him be anathema.<sup>42</sup>

The phrase, “such definitions of the Roman Pontiff are of themselves, and not by the consent of the church, irremediable,” was the most controversial point, because the majority and Pope Pius IX wanted to emphasize the personal and absolute infallibility of the Pope, independent of the Church and the universal episcopate, while the minority would have preferred to locate the Pope’s infallibility within the Church and in consultation with the bishops of the universal

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<sup>41</sup> For details concerning the discussions in the council: G. Martina, *Pio IX (1867-1878)*, 166-205.

<sup>42</sup> Vatican I, Session 4 of 18 July 1870, constitution *Pastor aeternus*, chapter 4, in *Decrees of the Ecumenical Councils*, vol. 2, 816; *Conciliorum oecumenicorum decreta*, 816.

Catholic Church. Although attempts were made to reach a consensus, this was not completely successful, and the dogma was accepted with the positive votes of the great majority of the Fathers.<sup>43</sup> The definition of the Pope's personal infallibility also contributed to the strengthening of his universal jurisdictional primacy and his absolute supremacy over the Church. In short, with the First Vatican Council, the progressive development of papal primacy reached its climax with the promulgation of two irrevocable dogmas to be believed by all Christian faithful of the Catholic Church.

### **1.8. Universal Primacy of Papal Jurisdiction and the 1917 Code of Canon Law**

The *Code of Canon Law*, promulgated on 27 May 1917 and obtained force of law on 19 May 1918, translated into legal language the doctrine of universal papal primacy of jurisdiction as developed in the second millennium and as defined by the First Vatican Council.<sup>44</sup> Canon 218 states:

§ 1. The Roman Pontiff, the Successor in primacy to Blessed Peter, has not only a primacy of honour, but supreme and full power of jurisdiction over the universal Church both in those things that pertain to faith and morals, and in those things that affect the discipline and government of the Church spread throughout the whole world.

§ 2. This power is truly episcopal, ordinary, and immediate both over each and every church and over each and every pastor and faithful independent from any human authority.

The Roman Pontiff, legitimately elected, immediately upon accepting the election, obtains by divine law the full power of supreme jurisdiction (canon 219). The corresponding Eastern legislation contained in the *motu proprio Cleri sacntitati* reproduces verbatim the canons of the 1917 Latin Code concerning the Roman Pontiff (canons 162-165).<sup>45</sup>

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<sup>43</sup> Cf. G. Martina, *Pio IX (1867-1878)*, 190-205.

<sup>44</sup> Benedict XV, apostolic constitution of promulgation *Providentissima Mater Ecclesia*, in *Acta Apostolicae Sedis* 9-II (1917) 5-7; complete Latin text of the Code in pages 11-456; English translation: *The 1917 Pio-Benedictine Code of Canon Law*, edited by E. N. Peters, San Francisco 2001.

<sup>45</sup> Pius XII, *motu proprio Cleri sacntitati* (2 June 1957), in *Acta Apostolicae Sedis* 49 (1957) 433-600; English translation in P. Pallath (ed.), *Code of Eastern Canon Law: English Translation of the Four Apostolic Letters Issued Motu Proprio by Pope Pius XII*, Kottayam 2021, 442-651.

Since the Pope possesses full, complete, and supreme power, all other authorities in the Church, including Ecumenical Councils, are nothing but participants in the power of the Pope. This is also evident from the systematic arrangement of the 1917 Latin Code. In fact, title VII of Book 1, entitled *De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes*, after presenting Roman Pontiff as the supreme authority (chapter 1), treat those who by ecclesiastical law participate in it, namely Ecumenical Councils (chapter II), the cardinals of the holy Roman Church (chapter III), the Roman curia (chapter IV), the legates of the Roman Pontiff (chapter V), the patriarchs, primates, metropolitans (chapter VI), and the plenary and provincial councils (chapter VII), etc.

### **1.9. Supreme Universal Primacy of the Pope and Development of the Roman Curia**

In the early Church a group of priests or deacons and later a consistory of bishops around Rome assisted the Pope in governing the Church.<sup>46</sup> To deal with particularly important matters, the Bishop of Rome convened Roman synods or councils, as was customary in the early Church, to which he summoned the bishops governing the ecclesiastical province of Rome. From the sixth century onward, as cardinals gradually gained prominence in the Roman Church, Roman Pontiffs resorted to their services with increasing frequency. Pope Nicholas II (1059-1061), with the bull *In nomine Domini* of 13 April 1059, in the Roman Synod, reserved the right to elect the Roman Pontiffs to the cardinals. From then on, the importance of the college of cardinals and its collaboration in the governance of the Church steadily increased, and gradually, the consistory of cardinals replaced the Roman Synod.<sup>47</sup> In the first millennium there were no permanent congregations or dicasteries, but only individual collaborators and colleges, to whom the Roman Pontiff entrusted various tasks.<sup>48</sup>

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<sup>46</sup> For information about the early stages of the Roman Curia: Niccolò del Re, *La Curia Romana: Lineamenti storico-giuridici* (iv ed.) Roma 1998, 21-22; A. M. Stickler, "Le riforme della Curia nella storia della Chiesa," in *La Curia romana nella cost. ap. Pastor bonus*, a cura di P. A. Bonnet -C. Gullo, Città del Vaticano 1990, 1-3.

<sup>47</sup> M. Mosconi, "L'elezione del Romano Pontefice come espressione del suo ufficio di "perpetuo e visibile principio e fondamento dell'unità sia dei Vescovi sia della moltitudine dei fedeli (LG 23)," in *Quaderni di Diritto Ecclesiale* 22 (2009) 230-232; N. del Re, *La Curia Romana*, 25-26; G. Ghirlanda, *Chiesa universale a chiesa particolare* (Cann. 330-572), Roma 2023, 258-259.

<sup>48</sup> A. M. Stickler, "Le riforme della Curia nella storia della Chiesa," 3-5.

However, parallel to the supreme papal primacy of universal jurisdiction, the Roman Curia also developed, through which the Pope practically exercised his supreme power, a major cause of the centralization of ecclesiastical governance. In fact, the Roman Curia developed in the second millennium with permanent structures and bureaucratic organization.<sup>49</sup> During the reign of Pope Urban II (1088-1099), who contributed much to the development of the Roman Curia, it was established on the model of a royal ecclesiastical court. Gradually, different departments were created according to the needs of the time.<sup>50</sup>

On 21 July 1542, Pope Paul III appointed a commission of six cardinals to watch over matters of faith.<sup>51</sup> This commission, which became known as the Holy Roman and Universal Inquisition, was initially a tribunal that dealt exclusively with cases of heresy and schism. It later became the first Congregation, namely, the Sacred Congregation of the Holy Office. Following this model, other congregations were then founded.<sup>52</sup>

Pope Pius IV (1560-1565) entrusted the supervision of the implementation of the norms of the Council of Trent (1545-1563) to a commission of the first eight and then eleven cardinals, which became the permanent Congregation of the Council in 1564. In 1571, Pius V created the Congregation for the Reform of the Index of Forbidden Books, which until then had been the responsibility of the aforementioned Inquisition.<sup>53</sup> Over time, the Roman Curia continued to evolve with the creation of various permanent congregations and dicasteries.<sup>54</sup> With the Apostolic Constitution *Immensa Aeterni Dei* of 22 January 1588, Pope Sixtus V (1585-1590) completely reorganized the Roman Curia and created fifteen permanent congregations: 10 for the ecclesiastical governance of the universal Church and 5 for the political administration of the Papal States.<sup>55</sup>

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<sup>49</sup> Cf. N. del Re, *La Curia Romana*, 21.

<sup>50</sup> Cf. G. Ghirlanda, *Chiesa universale a chiesa particolare*, 282-283.

<sup>51</sup> Paul III, bull *Licet ab initio*, in *Bullarium Romanum* VI, Torino 1860, 344-346.

<sup>52</sup> N. del Re, *La Curia Romana*, 29.

<sup>53</sup> N. del Re, *La Curia Romana*, 29.

<sup>54</sup> N. del Re, *La Curia Romana*, 30-33; A. M. Stickler, "Le riforme della Curia nella storia della Chiesa," 4-6.

<sup>55</sup> Sixtus V, Constitution *Immensa Aeterni Dei*, in *Bullarium Romanum* VIII, Torino 1863, 989-990. In the second millennium the Pope was also the secular ruler of vast territories in Italy. At the zenith of the papal power those states included most of the modern Italian regions of Lazio, Marche, Umbria and Romagna.

Obviously, after the reform of Pope Sixtus V, some congregations disappeared over the centuries, and others came into being according to the circumstances of the time, but it is not the scope of this article to present them.<sup>56</sup> However, some dicasteries are mentioned because of their importance to the mission territories and the Eastern Catholic Churches. Pope Gregory XV established the Congregation for the Propagation of the Faith (*Congregatio de Propaganda Fide*) on 22 June 1622 by the apostolic constitution *Inscrutabili divinae*.<sup>57</sup> Although the main task of the Congregation was to direct and supervise missionary activity throughout the world, the Eastern Catholic Churches were also placed under its authority. Over time, various commissions or bodies arose within Propaganda Fide to deal with the canonical and liturgical affairs of the Eastern Churches, such as the *Congregatio super Dubiis Orientalium* (1627-1636), the *Congregatio super Correctione Euchologii Graecorum* (1636- 1717) and the *Congregatio super Correctione Librorum Orientalium* (1717-1862).<sup>58</sup> On 6 January 1862, with the apostolic constitution *Romani Pontifices* Pope Pius IX established another separate body in the Congregation of Propaganda Fide for the Eastern Churches with the name the 'Sacred Congregation of Propaganda Fide for the Affairs of the Eastern Rite'.<sup>59</sup>

Under Pope Pius X, another general reorganization took place in 1908, reflecting the focus on purely ecclesiastical matters after the loss of the Papal States.<sup>60</sup> On 29 June 1908, Pope Pius X promulgated the Apostolic Constitution *Sapienti consilio*, under which the Roman Curia consisted

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<sup>56</sup> For information about the evolution of the Roman Curia from 1588 to 1908: N. del Re, *La Curia Romana*, 38-49.

<sup>57</sup> *Collectanea Sacrae Congregationis de Propaganda Fide*, vol. 1, Romae 1907, 2-4; also in *Bullarium Romanum* XII, Torino 1867, 690-693.

<sup>58</sup> For details, M. Dziob, *The Sacred Congregation for the Oriental Church*, Washington 1945, 48-51; O. Raquez, "La Congrégation pour la correction des livres de l'Eglise orientale (1719-1862)," in J. Metzler (ed.), *Sacrae Congregationis de Propaganda Fide Memoria Rerum*, vol. 2, Rome-Freiburg-Vienna, 1971, 112-145; M. Vattappalam, *The Congregation for the Eastern Churches: Origins and Competence*, Rome 1999, 36-41.

<sup>59</sup> Pius IX, apostolic constitution *Romani Pontifices*, in *Codicis Iuris Canonici Fontes*, vol. II, Romae 1924, 946-953. The Latin name of the Congregation was: *Congregatio de Propaganda Fide pro negotiis ritus orientalis*.

<sup>60</sup> In the second half of the XIX century there were constant attempts to curtail the temporal power of popes as rulers of civil territories and to confiscate the Papal States. On 20 September 1870 even Rome was conquered by the Italian forces and was annexed to the Kingdom of Italy, thus completing the unification of Italian Peninsula. For details, R. De Cesare, *The Last Days of Papal Rome* (1850-1870), London 1909; G. Martina, *Pio IX (1867-1878)*, 233-282.



of 11 permanent congregations, three tribunals and five offices.<sup>61</sup> The Sacred Roman Rota, which had ceased its activity in 1870, was re-established to deal with judicial cases, while the Congregations lost their judicial competence and became purely administrative bodies. On 1 May 1917, Pope Benedict XV, with the MP *Dei providentis*, separated the Eastern section of Propaganda Fide and established the independent Congregation for the Eastern Church (*Congregatio pro Ecclesia Orientali*), which was given jurisdiction over all Eastern Catholic Churches.<sup>62</sup> This reform of Pius X, later confirmed and supplemented in the Code of Canon Law promulgated by Benedict XV in 1917 (canons 242-264), remained practically unchanged until the Second Vatican Council.<sup>63</sup>

Corresponding to the consolidation of the primacy of the Roman Pontiff, who with the First Vatican Council acquired full, supreme and complete power in the universal Church and in every diocese, the second millennium also saw the rapid development of the Roman Curia, through which universal primatial power was exercised. In fact, the Roman Curia, for and on behalf of the Pope, regulated the ministry of individual bishops, metropolitans and patriarchs, as well as collegial bodies such as the particular councils of the Latin Church and the patriarchal synods of the Eastern Churches, resulting in extreme centralization and rigid uniformity, to the detriment of ecclesial pluralism, communion ecclesiology, episcopal collegiality, local autonomy and legitimate diversity.

### 1.10. Papal Origin of Episcopal Power of Governance

According to the undivided common tradition of the Church, a bishop was consecrated for a particular Church (diocese or eparchy), and by the consecration itself, he received all the powers necessary for the governance of that Church. No doctrinally or juridically relevant distinction was made between powers of order and powers of jurisdiction.<sup>64</sup> In the second millennium, as a result of the consolidation

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<sup>61</sup> Pius X, Apostolic Constitution *Sapienti consilio*, in *Acta Sanctae Sedis* 41 (1908) 425-440; also in *Acta Apostolicae Sedis* 1 (1909) 7-19.

<sup>62</sup> Benedict XV, MP *Dei providentis*, in *Acta Apostolicae Sedis* 9-I (1917) 529-531.

<sup>63</sup> The corresponding Eastern legislation *Cleri sanctitati* reproduces the canons of the 1917 Latin Code concerning the Roman Curia. See canons 188-210.

<sup>64</sup> Cf. Y. Congar, *Ministères et communion ecclésiale*, Paris 1971, 83-90; W. Bertrams, *De relatione inter episcopatum et primatum: principia philosophica et theologica quibus relatio iuridica fundatur inter officium episcopale et primatiale*, Roma 1963, 56; "Il soggetto del potere supremo nella Chiesa," in *Civiltà Cattolica* 116/11 (1965) 568; "Episcopato e primato nella vita della Chiesa," in *Civiltà Cattolica* 113/11 (1962) 221; "La collegialità

of papal jurisdictional primacy and the concomitant Roman centralization, collegiality and the identity of bishops were relegated to the background, and a clear distinction or separation was also made between the power of order received through episcopal consecration and the power of jurisdiction conferred on the consecrated bishop by the Pope.<sup>65</sup> Such a conception is firmly established in the Church by the XII century.<sup>66</sup>

Thomas Aquinas (1225-1274) makes a clear distinction between the power of order, which is sacramental, and the power of jurisdiction, which is not sacramental but subject to human discretion.<sup>67</sup> Responding to the question of whether the schismatics have any power, Aquinas answers: "Spiritual power is twofold, the one sacramental, the other a power of jurisdiction. The sacramental power is one that is conferred by some kind of consecration," which is irremovable since it pertains to the essence of a person. "On the other hand, the power of jurisdiction is that which is conferred by a mere human appointment. Such a power as this does not adhere immovably to the recipient, so that it does not remain in heretics and schismatics [...].<sup>68</sup> Consequently, heretics and schismatics do not possess the powers of teaching and governing, and hence, their acts are null and void. Thomas Aquinas thus clearly distinguishes between the power of order received from God through episcopal consecration to perform sacramental acts and the power of

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episcopale," in *Civiltà Cattolica* 115/1 (1964) 440; *The Paopacy, the Episcopacy and Collegiality*, Westminster 1964, 50, 105-106 and 114; G. Alberigo, *Lo sviluppo della dottrina sui poteri nella Chiesa universale: momenti essenziali tra il XVI e il XIX secolo*, Roma 1964, 11-101 & 179-454.

<sup>65</sup> Cf. J. Ratzinger, *Il nuovo popolo di Dio: questioni ecclesiologiche*, Brescia 1971, 191-193; Y. Congar, *Ministères et communion ecclésiale*, 95-97; "De la communion des Eglises à une ecclésiologie de l'Eglise universelle," in *L'Episcopat et l'Eglise universelle (Unam Sanctam 39)*, Paris 1962, 240-248; "Ordre et juridiction dans l'Eglise," in *Sainte Eglise: études et approches ecclésiologiques (Unam Sanctam 41)*, Paris 1963, 203-237; W. Bertrams, "De quaestione circa originem potestatis iurisdictionis Episcoporum in Concilio Tridentino non resoluta," in *Periodica* 52 (1963) 465-469; *De relatione inter episcopatum et primum*, 54-55; "La collegialità episcopale," 440; W. De Vries, "Grenzen des päpstlichen Primats," in *Wort und Wahrheit* 26 (1971) 487-494.

<sup>66</sup> Cf. J. A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*, Chicago 2008, 76-125; W. Bertrams, *The Paopacy, the Episcopacy and Collegiality*, 51, 105-106.

<sup>67</sup> Thomas Aquinas, IV Sent., d. 20, art. 4, q. la., resp.

<sup>68</sup> Thomas Aquinas, *Summa Theologiae, Secunda secundae*, q. 39, art. 3.

jurisdiction conferred by a human act, which can, therefore, be abrogated since it is not of divine or sacramental origin.<sup>69</sup>

According to the theory of separation further developed in the second millennium, only the power of orders, namely the spiritual authority to ordain and to celebrate the sacramental rites, is received directly from Christ at the episcopal consecration, but the power of governance or jurisdiction, namely the authority to teach and govern, is conferred on bishops by the Roman Pontiff. The sacrament of holy order confers only an attitude or disposition to receive jurisdiction. Christ directly conferred full, supreme, and universal authority only on Peter and his successors, and it is the Roman Pontiff who confers this jurisdictional power on the bishops, either collegially or singularly.<sup>70</sup>

In the most extreme form of the theory of separation, the advocates of papal power regarded the bishops as mere functionaries or officials of the Pope. They are simply the instruments of papal rule. In other words, the bishop has his own power of order, but the power of jurisdiction belongs solely to the Roman Pontiff himself, and the bishops share in it only insofar as they remain faithful to the commands of the Pope.<sup>71</sup>

After the development of the theory of the separation of the power of order and the power of jurisdiction, it found expression in the teaching of the Roman Pontiffs before the Second Vatican Council. Pope Leo XIII (1878-1903) stated:

[...] Bishops are deprived of the right and power of ruling, if they deliberately secede from Peter and his successors; because, by this secession, they are separated from the foundation on which the whole

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<sup>69</sup> For more about the doctrine of Thomas Aquinas: G. Ghirlanda, *Chiesa universale a chiesa particolare*, 490-491 and 494-498; O. De Bertolis, *Origine ed esercizio della potestà ecclesiastica di governo in San Tommaso*, Roma 2005, 21-39.

<sup>70</sup> Cf. D. Staffa, "De collegiali episcopatus ratione," in *Divinitas* 8 (1964) 42-46; A. Gutierrez, "Collegium episcopale tamquam subiectum plenae et supremae potestatis," in *Divinitas* 9 (1965) 425-426; U. Lattanzi, "Episcopalis collegii ad papam relatio," in *Acta congressus internationalis de theologia Concilii Vaticani II, Romae diebus 26 septembris-1 octobris 1966 celebrati*, Typis Polyglotis Vaticanis 1968, 136-145; "De nexu agnoscendo inter episcopalem consecrationem et sacra Ecclesiae munera," *Divinitas* 9 (1965) 398-410; G. Ghirlanda, *Chiesa universale a chiesa particolare*, 479-494. He makes a disparate attempt to find some traces of this theory even in the first millennium: see the same book pages 498-508.

<sup>71</sup> Cf. J. Greenaway, *The Differentiation of Authority: The Medieval Turn Toward Existence*, Washington D.C. 2012, 207-208; B. Tierney, "Church Law and Alternative Structures: A Medieval Perspective," in F. Oakley and B. M. Russett (ed.), *Governance, Accountability, and the Future of the Catholic Church*, New York 2004, 55.

*edifice* must rest [...]. No one, therefore, unless in communion with Peter can share in his authority, since it is absurd to imagine that he who is outside can command in the Church [...].<sup>72</sup>

Pope Pius XII (1939-1958) taught that each bishop, as far as his own diocese is concerned, is a true Shepherd who feeds the "flock entrusted to him and rules it in the name of Christ. Yet in exercising this office they are not altogether independent, but are subordinate to the lawful authority of the Roman Pontiff, although enjoying the ordinary power of jurisdiction which they receive directly from the same Supreme Pontiff."<sup>73</sup> John XIII in the allocution at the secret consistory of 15 February 1958 affirmed that non jurisdiction could certainly arise from a sacrilegious episcopal consecration, performed without an "apostolic mandate."<sup>74</sup>

The theory developed in the second millennium concerning the papal origin of the episcopal power of governance or jurisdiction is reflected in the 1917 Code of Canon Law. The sacred hierarchy is a divine institution and the various grades are established by divine law (canon 108 § 3). "Those who are taken into the ecclesiastical hierarchy [...] are constituted in the grades of the power of orders by sacred ordination; into the supreme pontificate, by divine law itself upon the completion of the conditions of legitimate election and acceptance; in the remanding grades of jurisdiction, by the canonical mission" (canon 109). According to the canon, only the Roman Pontiff receives the power of jurisdiction by divine law. All other grades of order obtain jurisdiction from the Roman Pontiff through the canonical mission. Only the Roman Pontiff can grant jurisdiction by canonical mission (canon 332). In summary, the one who is incorporated into the hierarchy by sacred ordination and receives the power of order, then obtains the power of governance or jurisdiction from the Roman Pontiff, who alone receives it directly from God.

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<sup>72</sup> Leo XIII, Encyclical *Satis cognitum* (29 June 1896), n. 15, in ASS 28 (1895-1896) 733-734.

<sup>73</sup> Pius XII, Encyclical *Mystici corporis* (29 June 1943), n. 42, in *Acta Apostolicae Sedis* 35 (1945) 212. The Pope reiterates the same idea in other encyclicals: *Ad sinarum gentem* (7 October 1954), n. 12, in *Acta Apostolicae Sedis* 47 (1955) 9; *Ad apostolorum principis* (29 June 1958), nn. 39-40, in *Acta Apostolicae Sedis* 50 (1958) 610.

<sup>74</sup> John XXIII, Allocution *Ex quo die*, in *Acta Apostolicae Sedis* 50 (1958) 983.

### 1.11. Papal Origin of Metropolitan Power and the Bestowal of Pallium

The pallium of the Latin Church and the omophorion of the Greek and Coptic Churches were considered in the early Church only as liturgical vestments and as symbols of the spiritual authority of the pastors.<sup>75</sup> Although the pallium could initially be used by any bishop, it gradually evolved into a symbol of metropolitan authority, which by the second millennium at the latest was seen as sharing in the fullness of power of the Roman Pontiff. Already since the IX century, all metropolitans were obliged to request the pallium from the Roman Pontiff within three months of their consecration, and until they received it, their metropolitan and even episcopal powers were restricted.<sup>76</sup>

The juridical significance of the pallium reached its peak during the pontificate of Pope Innocent III (1198-1216), who reiterated that the conferment of the pallium, together with a profession of faith and a promise of obedience to the Holy See, were necessary conditions for the exercise of metropolitan rights.<sup>77</sup> Thus, the pallium became the symbol of the 'plenitude of the pontifical office' and the specific insignia of a metropolitan archbishop, that is, an archbishop who is the head of a metropolitan see.

In the 1917 Code of Canon Law, the canons on metropolitans (272-279) were placed under the main title, those who share in the supreme authority of the Pope, to make it clear that metropolitan power is a sharing in the primatial authority of the Roman Pontiff. Two relevant canons concerning the juridical significance of the pallium are reproduced below:

Canon 275: A Metropolitan is bound by the obligation, within three months of consecration or, if he is already consecrated, from his canonical provision in Consistory, of seeking from the Roman Pontiff the pallium, either personally or through a procurator, that signifies archiepiscopal power.

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<sup>75</sup> Cf. G. Orioli, "La collazione del pallio," in *Nuntia* 2 (1976) 88. The *pallium*, made of lamb's wool, is a white band measuring about 5 cm in width. Two equally wide bands, about 30 cm long containing small silk-covered lead pieces, extend one in front and one on the back.

<sup>76</sup> Cf. P. Erdö, "Palio," in *Diccionario General de Derecho Canonico* (J. Otaduy, A. Viana & J. Sedano edd.), vol. V, Pamplona 2002, 883-884; G. Ghirlanda, *Chiesa universale a chiesa particolare*, 692.

<sup>77</sup> P. Erdö, "Palio," 884; G. Ghirlanda, *Chiesa universale a chiesa particolare*, 692.

Canon 276: Wherefore, before the imposition of the pallium, outside of a special apostolic indult, he illicitly places any acts, whether of metropolitan jurisdiction or of episcopal orders, that, in accord with liturgical law, require the use of the pallium.

Metropolitans in the Latin Church were obliged to request the pallium from the Roman Pontiff in accordance with the concept of metropolitan power as sharing in the supreme power of the Pope and therefore granted by him through the symbolic grant of the pallium. In accordance with this concept, restrictions were also placed on the exercise of metropolitan power prior to the reception of the pallium, rendering it unlawful. Surprisingly, a bishop appointed metropolitan could not even lawfully exercise his episcopal power, which required the use of the pallium.

## **2. Disappearance of Synodality in the West**

In the first millennium, even in the West, there were various types of local episcopal bodies for collegial governance, based mainly on the canons of ecumenical councils and generally recognised local synods. In the West, they were generally called particular councils, which can be divided into provincial councils and plenary or national councils. In this section, we discuss the gradual decline of conciliar activity in the West in light of the legislation of the general (ecumenical) councils of the second millennium up to the Second Vatican Council.

### **2.1. Gradual Decadence of Particular Councils**

The Council of Nicaea I, canon five, and the Council of Chalcedon canon twenty-eight established that provincial councils should be held twice a year; and Nicaea II, canon six ordered the obligatory convocation of a provincial council in each province at least once a year, although there are some difficulties. According to the legislation of the ecumenical councils, provincial synods and plenary councils were also held in the West.<sup>78</sup>

#### **2.1.1. Legislation of the Ecumenical Councils of the Second Millennium on Particular Councils**

The Fourth Lateran Council (1215) reminded metropolitans of the ancient canonical tradition of convoking provincial synods. The purpose of such councils, according to the Lateran Council IV, is to

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<sup>78</sup> For details: P. Pallath, *Local Episcopal Bodies in East and West*, 46-90.

correct excesses, reform customs, and punish transgressors (judicial function). The sixth constitution of the council states:

As is known to have been ordained of old by the holy fathers, metropolitans should not fail to hold provincial councils each year with their suffragans in which they consider diligently and in the fear of God the correction of excesses and the reform of morals, especially among the clergy. Let them recite the canonical rules, especially those which have been laid down by this general council, so as to secure their observance, inflicting on transgressors the punishment due. In order that this may be done more effectively, let them appoint for each diocese suitable persons, that is to say prudent and honest persons, who will simply and summarily, without any jurisdiction, throughout the whole year, carefully investigate what needs correction or reform and will then faithfully report these matters to the metropolitan and suffragans and others at the next council, so that they may proceed with careful deliberation against these and other matters according to what is profitable and decent. Let them see to the observance of the things that they decree, publishing them in episcopal synods which are to be held annually in each diocese. Whoever neglects to carry out this salutary statute is to be suspended from his benefices and from the execution of his office, until his superior decides to release him.<sup>79</sup>

The same Council also speaks about the judicial power of provincial councils over diocesan bishops. The Council observed that some bishops appointed unworthy persons, lacking both scholarship and honest conduct, to ecclesiastical benefices. According to the Council, a careful investigation of such abuses was to be conducted each year at the provincial Council, and "he who has been found guilty after a first and second correction is to be suspended from conferring benefices by the provincial Council, and a prudent and honest person is to be appointed at the same Council to make up for the suspended person's failure in this matter [...]. The offence of a metropolitan, however, shall be left by the Council to be reported to the judgment of the superior."<sup>80</sup>

The Council does not permit the provincial Council to take legal action against the metropolitan, the head of the province; the offences of a metropolitan are to be reported "to the superior," namely to the Roman Pontiff or to the competent Patriarch. A suspension imposed on a

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<sup>79</sup> *Decrees of the Ecumenical Councils*, vol. 1, 236-237; *Conciliorum oecumenicorum decreta*, 236-237.

<sup>80</sup> Lateran IV, Constitution 30, *Decrees of the Ecumenical Councils*, vol. 1, 249; *Conciliorum oecumenicorum decreta*, 249.

bishop cannot be lifted without the authority of the Roman Pontiff or the Patriarch.<sup>81</sup>

Despite the constant canonical tradition of the Church, reaffirmed by various ecumenical councils in the first millennium and the Fourth Lateran Council, metropolitans were reluctant to celebrate provincial councils. Against this background, the General Council of Basel (1431-1445) decreed that provincial councils be convened at least every three years and established penalties for those who neglected to celebrate councils. A provincial council should be attended by the archbishop and all his suffragan bishops and "others who are obliged to take part, after a due summons has been issued to them. If a bishop is prevented by a canonical impediment, he should designate his procurator who participates in the Council in his name and reports back what the council decides."<sup>82</sup> The Council of Basel clearly states the purpose of the provincial councils: 1) correction of errors and reform of morals; 2) careful inquiry into the activities of the metropolitan himself in relation to the points already mentioned; 3) settlement of disputes, disagreements, discords, and feuds; 4) election of suitable persons for the general (ecumenical) Council, in a provincial council immediately preceding an impending general council.<sup>83</sup>

The Fifth Lateran Council (1512-1517) reiterated the constant tradition of the Church concerning particular councils (provincial), prescribing that a "provincial council is to be held every three years and we decree that even exempt persons are to attend them, notwithstanding any privilege or custom to the contrary. Those who are negligent in these matters are to know that they will incur the penalties contained in the same canons."<sup>84</sup> The purpose of particular councils, according to the Fifth Lateran Council is as follows:

[...] it has also been laid down by the sacred canons that the provincial councils and episcopal synods ought to be established by such persons [patriarchs, primates, archbishops and bishops] for the correction of morals, the settlement and limiting of controversies, and the observance of God's commandments, in order that corruptions

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<sup>81</sup> *Decrees of the Ecumenical Councils*, vol. 1, 249; *Conciliorum oecumenicorum decreta*, 249.

<sup>82</sup> *Decrees of the Ecumenical Councils*, vol. 1, 474; *Conciliorum oecumenicorum decreta*, 474.

<sup>83</sup> *Decrees of the Ecumenical Councils*, vol. 1, 473-476; *Conciliorum oecumenicorum decreta*, 475.

<sup>84</sup> *Decrees of the Ecumenical Councils*, vol. 1, 631-632; *Conciliorum oecumenicorum decreta*, 631-632.



may be corrected and those neglecting to do these things may be subjected to canonical penalties. In our desire that these canons be faithfully observed, since it is right for us to be interested in what concerns the Christian state, we place a strict obligation on the said patriarchs, primates, archbishops and bishops, in order that they may be able to render to God a worthy account of the office entrusted to them, that they order the canons, councils and synods to be observed inviolably, notwithstanding any privilege whatsoever.<sup>85</sup>

The Council of Trent (1545-1563) also treated the question of councils (provincial) and urged that, "Wherever they have elapsed, provincial councils for the control of conduct, correction of abuses, settling disputes and other matters allowed by the sacred canons are to be restored. Hence, metropolitans should not omit to summon a council in their province, either personally or if legitimately hindered through their senior suffragan bishop, within one year at least from the end of the present council [Council of Trent], and then at least every three years, after the octave of the Easter resurrection of our Lord Jesus Christ, or at another time more convenient in the tradition of the province."<sup>86</sup> In order that no bishop may be excluded from participating in a provincial synod, the Council regulated that "Bishops not subject to any archbishop should choose a neighbouring metropolitan once and for all and are then obliged to take part with the others in his provincial synod and to observe and to see to the observance of all decided at it."<sup>87</sup>

### **2.1.2. Rigorous Conditions for the Celebration of Particular Councils**

After presenting the legislation of the ecumenical councils concerning particular councils, it would not be out of place to point out that in the second millennium some significant changes took place regarding the celebration of particular councils in the West. Throughout the first millennium, metropolitans or primates convened particular councils, presided over them, and promulgated laws in accordance with the decrees of ecumenical councils. However, with the Gregorian reform of the eleventh century, spearheaded especially by Pope Gregory VII

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<sup>85</sup> *Decrees of the Ecumenical Councils*, vol. 1, 631; *Conciliorum oecumenicorum decreta*, 631.

<sup>86</sup> Council of Trent, Session 24, c. 2, *Decrees of the Ecumenical Councils*, vol. 2, 761; *Conciliorum oecumenicorum decreta*, 761.

<sup>87</sup> Council of Trent, Session 24, c. 2, *Decrees of the Ecumenical Councils*, vol. 2, 761; *Conciliorum oecumenicorum decreta*, 761.

(1073-1085),<sup>88</sup> the so-called legatine councils emerged. Accordingly, a legate of the Roman Pontiff convoked councils, presided over them, and gave legal force to the resulting decrees with his signature. Similarly, the Gregorian popes decreed that the permission of the Pope was required to hold a particular council.<sup>89</sup>

Pope Sixtus V (1585-1590) made another important change with the publication of the bull *Immensa aeterni* of 22 January 1588, by which he reorganized the Roman Curia and formed 15 permanent congregations, including the Congregation for the Execution and Interpretation of the Council of Trent (later known as the Congregation of the Council). The Congregation was responsible for the authentic interpretation and execution of the disciplinary decrees of the Council of Trent. The Pope prescribed that the conciliar decrees of all provincial councils held anywhere in the world be transmitted to the said Congregation for revision and confirmation.<sup>90</sup> The decrees revised and confirmed by the Holy See acquired legal force after the necessary promulgation. Thus, all conciliar activity in the Latin Church was strictly controlled by the Roman Curia.

The decrees and canons of the ecumenical councils are completely silent about the celebration of national or plenary councils. Such councils were very rarely held. The procedure for celebrating them in the second millennium was almost the same as for provincial councils. Before a plenary council could be convoked, permission had to be obtained from the pope, who appointed a legate. The papal legate then convened and presided over the councils. The conciliar decrees acquired legal force only after revision and confirmation or approval by the Holy See and subsequent promulgation.<sup>91</sup> Practically, the same procedure was

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<sup>88</sup> For information about the Gregorian reform, see no. 1.1. in this article.

<sup>89</sup> S. C. Bonicelli, *I concili particolari da Graziano al concilio di Trento: studio sulla evoluzione del diritto della Chiesa latina*, Brescia 1970, 22-25; P. Hinschius, *System des katholischen Kirchenrechts mit besonderer Rücksicht auf Deutschland*, vol. 3, Berlin 1883, 647; A. Garcia Y Garcia, "Episcopal Conferences in Light of Particular Councils during the Second Millenium," in *The Jurist* 48 (1988) 63; H. J. Sieben, "Episcopal Conferences in Light of Particular Councils during the First Millenium," in *The Jurist* 48 (1988) 55.

<sup>90</sup> "[...] Et quoniam eodem concilio tridentino decretum est synodos provinciales tertio quoque anno, dioecesanis singulis annis celebrari debere, id in executionis usum ab iis, quorum interest, induci eadem congregatio providebit. Provincialium vero, ubivis terrarum illae celebrentur, decreta ad se mitti praecipiet, eaque singula expendet et recognoscet." Sixtus V, the bull *Immensa aeterni*, 22, in *Bullarium Romanum*, tom. VIII, Romae 1863, 991.

<sup>91</sup> P. Hinschius, *System des katholischen Kirchenrechts*, 653-654.

prescribed for the convocation of provincial and patriarchal synods, even in the Eastern Catholic Churches.<sup>92</sup>

### 2.1.3. Particular Councils and the 1917 Code of Canon Law

In the 1917 Code canons 281-291 concerning plenary and provincial councils are collocated under the title VII of the Second Book, entitled *De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes*. This arrangement itself demonstrates that the power of particular councils was considered as a participation in the supreme authority of the Roman Pontiff according to ecclesiastical law.

Both plenary and provincial councils of the Latin tradition are retained in the 1917 Latin Code, although no frequency or obligation was stipulated for the former. A plenary council is the assembly of the bishops of several ecclesiastical provinces, which makes juridically binding decisions for their territory. Canon 281 regulates the convocation of plenary councils:

Several Ordinaries of ecclesiastical provinces can convene a plenary council, having come with a petition to the Roman Pontiff, who will designate his Legate to convoke and preside over the Council.

According to the canon, the Roman Pontiff ultimately decides the opportunity to hold a plenary council, to whom the bishops concerned should submit a request. Moreover, the Roman Pontiff appoints his legate to convoke and preside over the Council.

As we have already noted, the ecumenical councils of the centuries IV-V mandated the holding of provincial councils twice a year; the councils of the centuries VI-XIV fixed their annual holding, and those of the centuries XV-XVIII provided for them at least every three years. Also because of the mentioned restrictions, provincial councils practically died out by the nineteenth century. Against this background, the CIC 1917 stipulated: "In each ecclesiastical province, a provincial council is to be celebrated at least every twenty years" (c. 283). Normally, provincial councils are convoked and presided over by the metropolitan (c. 284).

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<sup>92</sup> For details: J. Hajjar, "Les synodes des Eglises orientales catholiques et l'évêque de Rome," in *Kanon* 2 (1974) 57-63 & 74-81; "The Synod in the Eastern Church," in *Concilium*, vol. 8/1 (1965) 33.

The restrictions on the promulgation of decrees and particular laws imposed on provincial and plenary councils in the second millennium were retained in the 1917 Code. Canon 291 § 1 states:

At the conclusion of a plenary or provincial Council, the president shall transmit all the acts and decrees to the Holy See, and he shall not promulgate them beforehand until they have been [reviewed] and recognized by the Sacred Congregation of the Council [...].

Obviously, the Sacred Congregation revised, corrected and modified the decrees and laws according to the spirit of the times. In summary, due to Roman centralization and other socio-political reasons, synodal and conciliar activity in the Western Church was reduced to a minimum. Bishops and metropolitans appeared as autonomous mini-monarchs directly dependent on the Roman Pontiff and the Holy See, without the possibility of any collegial or synodal activity and expression of episcopal communion at provincial, regional and national levels.

## **2.2. Bishops' Conferences as a New Form of Synodality in the Latin Church**

The tendency toward centralization and the subsequent concentration of power and ecclesiastical governance in the Holy See led to the emergence of one and the same uniform legislation for the entire Church, to an effective control of conciliar activity at the various levels of ecclesiastical life, and to a remarkable reduction of the competences of diocesan bishops in the legislative field.<sup>93</sup> In the words of Joseph Ratzinger,

Historically it is no doubt that the role of synods in the governance of the Church in the West had undergone a progressive diminution in the course of centuries, especially as administrative decision-making became exercised increasingly by the Apostolic See. This process, though not always without some advantages for local Churches, brought with it an obfuscation of the principle of episcopal collegiality, which was fortunately rediscovered in the theological ressourcement of this century and came to a kind of fruition at the Second Vatican Council.<sup>94</sup>

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<sup>93</sup> A. Anton, *Le conferenze episcopali: istanze intermedie? Lo stato teologico della questione*, Cinisello Balsamo 1992, 34-35; cf. also K. Rahner, "On Bishops' Conferences," in *Theological Investigations*, vol. 6, Baltimore 1961, 372.

<sup>94</sup> J. Ratzinger (Benedict XVI), "Le funzioni sinodali della Chiesa: l'importanza della comunione tra i Vescovi," *L'Osservatore Romano*, 12 gennaio 1996, 4.

Collegial or synodal activity, which was moribund in the West, took on a new beginning in the form of episcopal conferences. The origin of episcopal conferences goes back to the spontaneous assemblies of bishops in Belgium (1830) and in Germany (1848) in the first half of the nineteenth century. Beginning in 1869, the German bishops met annually in Fulda. The bishops of Bavaria assembled annually in Freising from 1850.<sup>95</sup> The bishops of Austria met in Vienna beginning in 1849, and on 3 March 1891 the Austrian Bishops' Conference received approval from Pope Leo XIII with a recommendation for annual meetings.<sup>96</sup> Similar bishops' conferences emerged in various countries such as Spain, Ireland, Portugal, France, Italy and in the countries of Latin America.<sup>97</sup> Pope Leo XIII encouraged these conferences and approved them as a means of promoting regularity and unity of ecclesiastical discipline.<sup>98</sup>

Peter Huizing indicates the continuous decline of conciliar activity in the Western Church as a negative reason for the origin of bishops' conferences:

Canon law knew only of regional or provincial synods. Regional synods were extremely closely tied to the Roman curia. They might not be held without the previous approval of the curia, a pontifical legate was to preside, and their decrees had no force until their revision and approval by the curia. What is more in some countries civil law prohibited the holding of episcopal synods without the previous approval of the civil authority. For these reasons, informal

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<sup>95</sup> P Huizing, "The Structure of Episcopal Conferences," in *The Jurist* 28 (1968) 164; A Anton, *Le conferenze episcopali*, 48-49; G. Feliciani, *Le conferenze episcopali*, Bologna 1974, 15-22; K. Rahner, "On Bishops' Conferences," 372-373; W. Aymans, *Das synodale Element in der Kirchenverfassung*, München 1970, 21-22.

<sup>96</sup> "Haec igitur et huiusmodi capita rerum graviora in deliberationem veniat per annos Episcoporum Congressus, quos placet inducere." Leo XIII, "In ipso supremi," in *Leonis XIII, Pontificia Maximi Acta*, vol. XI, Romae 1892, 42.

<sup>97</sup> Cf. G. Feliciani, *Le conferenze episcopali*, 25-40; A. Anton, *Le conferenze episcopali*, 51-57.

<sup>98</sup> Concerning the regional episcopal conferences of Italy, the Pope wrote: "In ciascuna delle mentovate regioni procureranno i vescovi di convenire insieme almeno una volta l'anno per appianare e risolvere con mutuo consiglio la difficoltà, che incontrano nel governo delle rispettive diocesi, per promuovere in tutto la regolarità e uniformità della ecclesiastica disciplina, e per emettere, ove le circostanze lo richiedessero, atti collettivi di qualsiasi specie." Leo XIII, "Alcuni arcivescovi," in *Leonis XIII, Pontificis Maximi Acta*, vol. IX, Romae 1890, 185.

meetings, different from synodal meetings of bishops took the place of formal councils.<sup>99</sup>

In the beginning, the bishops' conference provided an opportunity for the bishops of a nation to meet in a short time, free from all the juridical formalities, to discuss and consult on urgent problems facing a nation. Karl Rahner writes about the origin and usefulness of conferences:

Free discussions by individual bishops with one another at bishops' conferences are effective without any participation by the Roman See, as long as they remain within the limits of that jurisdiction within which every bishop can arrive at decisions without any special express permission from Rome in virtue of his *potestas ordinaria* which makes him more than a mere official of Rome [...]. In addition, the episcopal conferences are not bound by the prescriptions of CIC c. 281-291 concerning the methods of convocation and procedure of plenary and provincial synods, and are in this way much more easily able to accommodate themselves to the circumstances of the place, the needs of the time, and the nature of matter under discussion, and so are also technically easier to organize.<sup>100</sup>

Moreover, in some countries, the civil authorities also intervened in the conciliar activity of the local Church.<sup>101</sup> Therefore it is right to affirm that episcopal assemblies began in the Latin Church because of the restrictions imposed on the celebration of particular councils either by the Holy See or by the local civil authority.<sup>102</sup>

On the one hand, conciliar or synodal activities were almost completely absent in the West; on the other hand, the rapid cultural, sociopolitical, and economic changes of the nineteenth century required mutual consultation and cooperation among bishops at the national level. The revolutionary changes at the beginning of the XX century, such as the separation of Church and state, the secularization of the state, the phenomenon of rapid socialization, the changes in family, social, and religious life with their specific problems, and the resurgence of nationalism, presented the Church with serious problems that required

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<sup>99</sup> P. Huizing, "The Structure of Episcopal Conferences," 164-165.

<sup>100</sup> K. Rahner, "On Bishops Conferences," 374.

<sup>101</sup> For example, in Spain in 1590 Emperor Philip II prohibited the celebration of councils without the royal permission and required the presence of a royal delegate in the conciliar assembly as well as royal approbation of the results. A. Garcia Y Garcia, "Episcopal Conferences in Light of Particular Councils," 66-67.

<sup>102</sup> G. Ghirlanda, "Conferenza dei vescovi," in *Nuovo dizionario di diritto canonico*, a cura di C. C. Salvador, V. de Paolis & G. Ghirlanda, Cinisello Balsamo (Milano) 1993, 252.

coordination and cooperation among all bishops at the national level. Therefore, the bishops of a nation who shared the same religious and socio-cultural ethos joined together in common consultations, giving rise to the bishops' conferences.<sup>103</sup>

The purpose of such assemblies was mutual consultation on new common problems. Unlike conciliar assemblies, these gatherings lacked legislative power. The bishops could bind themselves by mutual consent. They could sanction the decrees they adopted together by their own diocesan laws. However, canonically binding laws of national episcopal assemblies were not recognized by the common law.<sup>104</sup> Thus, the bishops of a nation gathered to consult and inform each other, and such a *conventus episcoporum* thus constituted an organ of coordination and cooperation on general ecclesiastical problems that required common pastoral action in one or more nations.<sup>105</sup>

Although several national bishops' conferences were formed around the world even with the recognition of Roman Pontiffs, these conferences did not find any recognition in the 1917 *Code of Canon Law*, because their activity, especially their relationship with the central authority, was suspect. The only canon that can refer to bishops' conferences is canon 292 §1, which concerns the meeting of bishops under the metropolitan for mutual consultation:

Unless otherwise provided by the Apostolic See for particular places, the Metropolitan, or in his absence the senior among the Suffragans according to Canon 284, shall take care that local Ordinaries, at least every five years, at a set time, come together at the place of the Metropolitan or of one of the other Bishops, so that, gathered together in council, they may examine those things that ought to be done in the dioceses so that the good of religion is promoted, and so that they can prepare what things ought to be treated in a future provincial Council.

This canon does not deal directly with bishops' conferences. The conferences that existed before the promulgation of the Code usually included several provinces or an entire nation. Even after the Code, the conferences developed in a national direction rather than provincial assemblies. Also, at that time, the bishops' conferences were held

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<sup>103</sup> A. Anton, *Le conferenze episcopali*, 40 48; G. Feliciani, *Le conferenze episcopali*, 135-148.

<sup>104</sup> Cf. P. Huizing, "The Structure of Episcopal Conferences," 165.

<sup>105</sup> A. Anton, *Le conferenze episcopali*, 48.

annually and not every five years.<sup>106</sup> However, it can be rightly asserted that the canon indirectly implies the existence of bishops' conferences. For the first time, the *ius commune* applied the principle of obligatory consultative assemblies of ecclesiastical provinces, conceding *via facti* that provincial councils, held every twenty years, were not sufficient to solve the urgent problems of the Church at the local level.<sup>107</sup>

The canon also provides for exceptions: "Unless otherwise provided by the Apostolic See for particular places." It explicitly confirmed the norms issued by the popes for various national conferences and provided for the possibility of similar norms for other countries.<sup>108</sup> At that time, in some countries such as Belgium, the province was identical with the nation, and in such cases the provincial assembly was equal to the national one.<sup>109</sup> Thus, the bishops' conferences did indeed find some kind of juridical recognition, but with a precise and important limitation: the Holy See did not intend to recognize the national character of conferences through a norm of canon law.<sup>110</sup>

By making plenary councils optional without prescribing a fixed period for their holding, and making provincial councils obligatory only every twenty years, the Code paved the way for more bishops' conferences. After the Code, and especially after World War II, bishops' conferences sprang up all over the world with statutes, permanent secretariats, working committees, and other bodies recognised by the popes.<sup>111</sup> Their purpose always remained the same: mutual consultation on common problems. As Peter Huizing observes, "The essential impetus for the development of national and even international conferences was, and is, not the necessity for national and international canonical legislation, but the necessity for coordinated, unified pastoral activity, communication and instruction, Catholic action, social help and aid,

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<sup>106</sup> Cf. P. Huizing, "The Structure of Episcopal Conferences," 166; H. Müller, "The Relationship between the Episcopal Conference and the Diocesan Bishop," in *The Jurist* 48 (1988) 111; K. Rahner, "Sulle conferenze episcopali," in *Nuovi saggi*, vol. 1, Roma 1968, 608; W. Aymans, *Das synodale Element in der Kirchenverfassung*, 22-23.

<sup>107</sup> Cf. A. Anton, *Le conferenze episcopali*, 66 & 68.

<sup>108</sup> G. Feliciani, *Le conferenze episcopali*, 169; A. Anton, *Le conferenze episcopali*, 66.

<sup>109</sup> A. Anton, *Le conferenze episcopali*, 68.

<sup>110</sup> Cf. G. Feliciani, *Le conferenze episcopali*, 171, 273-306; M. Bonet, "The Episcopal Conference," in *Concilium* (October 1965) 26; A. Anton, *Le conferenze episcopali*, 69-86.

<sup>111</sup> Cf. A. Anton, *Le conferenze episcopali*, 69-86; G. Feliciani, *Le conferenze episcopali*, 273-306.



assistance for developing countries, missionary activity, communication with other religions, and governments."<sup>112</sup>

### 3. Decline of Synodality in the Catholic East

In the second millennium, the decline of synodality was evidenced in all aspects of Eastern ecclesiastical life, such as the election of patriarchs and bishops, the regulation of the liturgy and the publication of liturgical books, the enactment and promulgation of laws, and the administration of justice. Because of the vastness of the theme, the decline of synodality is demonstrated through two main elements: patriarchal authority and the election of bishops.

#### 3.1. Patriarchal Authority as a Sharing in the Fulness of the Supreme Power of the Pope

As we have already seen, the universal jurisdictional primacy of the Roman Pontiff, developed in the second millennium and definitively defined as a dogma at the First Vatican Council, attributed supreme, full and complete power to the Roman Pontiff. Consequently, all other powers in the Church were nothing more than a share in the fullness of papal power.

Therefore, in the second millennium, patriarchal power was also understood as participation in the supreme power of the Pope and, consequently, was conferred by the Pope as a privilege to the holders of the patriarchal sees. One became truly patriarch not by election, but by confirmation or investiture into office by the Apostolic See of Rome. Thus, confirmation of the patriarch by Rome logically became equivalent to appointment to the office.<sup>113</sup> On the new concept of patriarchal power, Wilhelm De Vries writes:

In the second millennium, on the contrary, we find a fundamentally different conception of the patriarch's position of preeminence. Now this is understood as a participation in the power of the Pope, and consequently is granted by the Pope as a privilege to the occupant of the patriarchal throne. Accordingly, the confirmation of the

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<sup>112</sup> P. Huizing, "The Structure of Episcopal Conferences," 166.

<sup>113</sup> "Il patriarca non diventa realmente tale per l'elezione, che del resto nei documenti pontifici viene comunemente chiamata 'electio seu postulatio', ma lo diviene solo con la conferma o l'insediamento da parte della S. Sede. Prima di tale conferma egli viene chiamato 'electus seu postulatus patriarcha'. Nelle bolle di conferma si dice regolarmente: 'Praeficimus te in patriarcham' o qualcosa di simile." W. De Vries, "La s. Sede ed i patriarcati cattolici d'Oriente," *Orientalia Christiana Periodica* 27 (1961) 348.

patriarchs logically becomes an appointment to the office. The hegemony of the patriarchs is no more the general right of self-determination in the fields of liturgy, canon law and discipline, but rather the sum of exactly determined and limited individual privileges, freely granted by Rome, which, even when taken all together, mean far less than the old autonomy of the first millennium.<sup>114</sup>

In addition to the development of the universal jurisdictional primacy of the Roman Pontiff, the appointment of Latin patriarchs in the Eastern regions during the Crusades also contributed to the new concept of patriarchal power. Beginning in the late eleventh century, the Crusaders confiscated traditional Eastern territories, and Latin patriarchates were established. The first Latin patriarchates were established in Antioch (1098) and Jerusalem (1099). The Fourth Crusade led to the sack and occupation of Constantinople and the establishment of a Latin patriarchate in 1204, thus perpetuating the "Great Schism." Later, a Latin patriarchate was also constituted in Alexandria in 1209.<sup>115</sup> It goes without saying that the Latin patriarchs were appointed, transferred and deposed by the Roman Pontiff at his will, as were the metropolitans of the Latin Church. Therefore, patriarchal power began to be considered simply a share in the supreme power of the Pope and patriarchal rights and privileges as papal concessions. Moreover, the Holy See did not regard the Latin patriarchates of the time as a new creation, but as the continuation of the original Eastern patriarchates.<sup>116</sup> Regarding this point, Hanz Joachim Schulz observes:

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<sup>114</sup> W. De Vries, "The Eastern Patriarchates and Their Relationship to the Power of the Pope," in *One in Christ*, vol. 2, no. 2 (1966) 130. Cf. also W. De Vries "Die Entstehung der Patriarchate des Ostens und ihr Verhältnis zur papstlichen Voligewalt," in *Scholastik* 37 (1962) 359; *Rom und die Patriarchate des Ostens*, 247-296; H. J. Schulz, "Dialogue with the Orthodox," *Concilium* 4 (1965) 137; V. Parlato, *L'ufficio patriarcale nelle Chiese orientali dal IV al X secolo*, Padova 1969, 113-114.

<sup>115</sup> G. Řezáč, "The Extension of the Power of the Patriarchs and of the Eastern Churches in General over the Faithful of Their Own Rite," *Concilium* 8 (1969) 60-61; T. Kane, *The Jurisdiction of the Patriarchs of the Major Sees in Antiquity and in the Middle Ages*, Washington 1949, 77-82; P. Schaff, *History of the Christian Church, Volume V*, 125-158; H. Jedin and J. Dolan (ed.), *History of the Church, Volume IV*, 154-158.

<sup>116</sup> Cf. Y. Congar, "Le pape comme patriarche d'occident: approche d'une réalité trop négligée," in *Istina* 28:4 (1983) 381; "Church Structures and Councils in the Relations between East and West," in *One in Christ* 11(1975) 229; W. De Vries, *Rom und die Patriarchate des Ostens*, 248; "Die Entstehung der Patriarchate des Ostens," 359-361. When the kingdoms created by the Crusaders became extinct the Latin patriarchs of the Eastern regions were considered titular patriarchs and for many centuries they were dignitaries of the papal court. Pope Pius IX (1846-1878) reconfirmed the Latin

The change of attitude came about largely through the regrettable erection of Latin patriarchates in the East during the crusades. Rome saw in these patriarchates the rightful heirs of the former Eastern sees, but considered their incumbents in the same way as the Latin metropolitans in the West whose particular position could hardly be interpreted otherwise than as a special sharing in the supreme power of the Pope. Later the incumbents of the old patriarchates also were treated in the same way [...].<sup>117</sup>

Consequently, the Eastern patriarchs who entered into full communion with the Catholic Church were treated in the same way as the Latin patriarchs appointed by Rome.

Gradually, the pallium, which had been indispensable since the ninth century for the exercise of metropolitan jurisdiction in the West and later for the Latin patriarchs, was made obligatory for patriarchs in general at the Fourth Lateran Council (1215). On the dignity of the patriarchs and the importance of the pallium, Pope Innocent III states, with the approval of the Council:

Renewing the ancient privileges of the patriarchal sees, we decree, with the approval of this sacred universal synod, that after the Roman Church, which through the Lord's disposition has a primacy of ordinary power over all other churches in as much as it is the mother and mistress of all Christ's faithful, the Church of Constantinople shall have the first place, the church of Alexandria the second place, the Church of Antioch the third place, and the church of Jerusalem the fourth place, each maintaining its own rank. Thus after their pontiffs have received from the Roman Pontiff the pallium, which is the sign of the fullness of the pontifical office, and have taken an oath of fidelity and obedience to him, they may lawfully confer the pallium on their suffragans, receiving from them for themselves canonical profession and the for the Roman church the promise of obedience [...].<sup>118</sup>

In accordance with this decree, the pallium was also imposed on the Eastern patriarchs who entered into full communion with the Catholic

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Patriarchate of Jerusalem and restored jurisdiction to its patriarch with the apostolic letter *Nulla celebrior* of 23 July 1847. *Iuris Pontificii (Ius Pontificium) de Propaganda Fide*, R. De Martinis (ed.), vol. VI, pars 1, Romae 1894, 40-44; cf. "Patriarcati latini" under the section "Note storiche" in the *Annuario Pontificio* of any year.

<sup>117</sup> H. J. Schulz, "Dialogue with the Orthodox," 138; cf. also W. De Vries, "The Eastern Patriarchates and Their Relationship to the Power of the Pope, 132.

<sup>118</sup> Lateran IV, constitution 5: *Decrees of the Ecumenical Councils*, vol. I, 236; *Conciliorum oecumenicorum decreta*, 236.

Church.<sup>119</sup> The pallium was considered a symbol of the fullness of papal power, and through the pallium, patriarchal and other jurisdictions were seen as emanating from and sharing in the *plenitudo potestatis* of the Roman Pontiff. The bestowal of the pallium precisely meant the admission of this participation and, thus, the conferral of the office.<sup>120</sup> The same notion of patriarchal privilege is evident in the profession of Michael Palaeologus at the Council of Lyons (1274), already cited in the treatment of the development of the universal primacy of the popes:

The fullness of power is thus realized in the Roman Church in such a way that she makes all other churches share in her solicitude; the same Roman Church has honoured many churches, especially the patriarchal churches, with various privileges [...].<sup>121</sup>

Because of these developments, the synodal election of patriarchs became almost synonymous with a proposal of candidates. In the apostolic letter *Riversurus* promulgated by Pope Pius IX on 12 July 1867, the manner of election of the Armenian Patriarchs is precisely stated:

[...]. Furthermore, we do not wish the elected patriarch to be enthroned, as they say, nor to acquire any right or jurisdiction, even by procuratorial or vicarious name or title in the patriarchate, unless his election or postulation has been previously approved by us or by the contemporary Roman Pontiff and confirmed according to custom, and the apostolic letter concerning his confirmation has been obtained, after having abolished any contrary custom. The same patriarch, although confirmed by the Apostolic See as above, will not be permitted to consecrate bishops, nor convene a synod, nor consecrate chrism, nor consecrate churches, nor ordain clerics, until he has received from the Apostolic See the sacred pallium [...].<sup>122</sup>

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<sup>119</sup> W. De Vries, "La Sede ed i patriarcati," 326-339; for the historical analysis of the imposition of the pallium on the heads of Eastern Churches: G. Orioli, "La collazione del pallio," in *Nuntia* 2 (1976) 93-96.

<sup>120</sup> H. Marot, "The Primacy and the Decentralization of the Early Church," *Concilium* 1 (1965) 14. For a detailed analysis of the meaning of the pallium and the effects of its bestowal on the Eastern patriarchs: W. De Vries, *Rom und die Patriarchate des Ostens*, 247-260; "The Eastern Patriarchates and Their Relationship to the Power of the Pope," 134-136; "Die Entstehung der Patriarchate des Ostens," 362-365; V. J. Pospishil, *Code of Oriental Canon Law, The Law on Persons*, Ford City 1960, 123.

<sup>121</sup> *Enchiridion symbolorum*, n. 861; Mansi 24, 71.

<sup>122</sup> Pius IX, Ap. Letter *Riversurus*, in *Acta Sanctae Sedis* 3 (1887) 390-391. For details on the historical context and events that led to the publication of *Reversurus*: G. Martina, *Pio IX (1867-1878)*, 53-74.

According to the apostolic letter *Reversurus*, two juridical acts of the Apostolic See were required: first, the confirmation of election and then the conferral of pallium. Before the conferral of the pallium, the elected and confirmed patriarch could not even exercise episcopal powers such as the consecration of churches and the ordination of clerics. In the context of the conflicts between Pope Pius IX and Chaldean Patriarch Joseph IV Audo (1848-1878) the same procedure for the election of the patriarch was extended to the Chaldean Catholic Church by the Apostolic Letter *Cum ecclesiastica disciplina* of 31 August 1869.<sup>123</sup>

The laws on the election of the patriarch in the previous Eastern legislation *motu proprio Cleri Sanctitati* (cc 221-239) were formulated almost in accordance with the concept of patriarchal power in the second millennium. This is already evident in the very structure of *Cleri Sanctitati* and in the systematic arrangement of the canons. The canons concerning patriarchs (chapter VI, cc. 216-314) follow the canons on the cardinals of the Holy Roman Church (chapter III, cc. 175-187), the Roman Curia (chapter IV, cc. 188-210) and the legates of the Roman Pontiff (chapter V, cc. 211-215). The Eastern legislation thus placed the patriarchs after the cardinals, major officials of the Roman Curia, and even after the representatives of the Pope such as nuncios, inter-nuncios, or apostolic delegates, some of whom were simply priests.<sup>124</sup>

The very title under which the canons on the patriarchs are placed, namely *De suprema potestate deque iis qui eiusdem sunt canonico iure participes*, indicates that in canon law, the patriarchs are accorded a share in the supreme power which belongs to the Roman Pontiff alone. Prof. Clarence Gallagher is very clear on this point:

It is only in Chapter VI that the current law for the eastern Churches comes to deal with the patriarch (cc.216-314). The order is itself significant and expresses an underlying ecclesiology. Interesting, too, is the heading given to this whole section of the law: '*De suprema potestate deque iis qui eiusdem sunt canonico iure participes*'. This implies

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<sup>123</sup> Pius IX, Ap. Letter *Cum ecclesiastica disciplina*, in *Iuris Pontificii (Ius Pontificium) de Propaganda Fide*, R. De Martinis (ed.), VI, pars 2, Romae 1894, 34; also in *Pii IX Pontificis Maximi Acta. Pars prima*, vol. V, Romae 1871, 38-47. For the historical context of the Apostolic Constitution *Cum ecclesiastica disciplina*, see G. Martina, *Pio IX (1867-1878)*, 96-108; J. Habbi, « Les Chaldéens et les Malabares au XIX siècle », in *Oriens Christianus* 64 (1980) 82-107; C. A. Frazee, *Catholics and Sultans: The Church and the Ottoman Empire, 1453-1923*, Cambridge 1983, 299-301; P. Pallath, *Rome and Chaldean Patriarchate in Conflict: Schism of Bishop Rokos in India*, Changanacherry 2017.

<sup>124</sup> Cf. P. K. Medawar, "The Rights of the Eastern Church," in Maximos IV Sayegh, *The Eastern Churches and Catholic Unity*, New York 1963, 48-51.

that the patriarchs are granted by canon law a share in the supreme power that, by divine law, belongs only to the Bishop of Rome. In this view patriarchal jurisdiction is understood as a participation in or a derivation from the power of the Roman Pontiff, similar to that granted by the Pope to the Roman congregations.<sup>125</sup>

The prescriptions of Pope Pius IX cited above concerning the election of patriarchs, were not fully incorporated into the Eastern legislation, when the elected patriarch is an ordained bishop or at least a canonically elected and confirmed bishop. In such cases, after the election, the Synod can proceed immediately to the proclamation and enthronement according to the liturgical books (c. 235 § 2). However, if the one elected is a priest who has not yet been legitimately elected and confirmed as bishop, the Synod must immediately notify the Roman Pontiff of the result of the election, and suspend the proclamation and enthronement of the one elected (c. 235 § 3, n. 1). Only when the confirmation of the Roman Pontiff is received can the proclamation and enthronement of the patriarch take place (c. 235 § 3, n. 3).

In both cases, however, the patriarchs were to request the pallium and ecclesiastical communion from the Roman Pontiff. Both the patriarch and the Synod were to send the Roman Pontiff separate reports on the canonical accomplishment of the election, as well as profession of faith and oath of fidelity pronounced by the patriarch. The Synod and the patriarch should also request ecclesiastical communion and the pallium, "which is an insignia of the fullness of the pontifical office" (c. 236). In accordance with the restrictions introduced by Pope Pius IX, as cited above, *Cleri Sanctitati* prescribes that "the patriarch who has been lawfully elected and enthroned, is prohibited to convoke the patriarchal synod [...], and to elect or ordain bishops before he has solemnly received confirmation and the pallium in a consistory" (c. 238 § 3).

According to *Cleri Sanctitati* the canonically elected and enthroned patriarch obtains only "full right to his office" "and not the office itself."<sup>126</sup> Accordingly, the granting of confirmation and pallium seems practically equivalent to an appointment, for he receives his office

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<sup>125</sup> C. Gallagher, "Concept of 'Protos' in the Eastern Catholic Churches," *Kanon* 9 (1989), 99-100; cf. also V. J. 'Pospishil, *Code of Oriental Canon Law, The Law on Persons*, 114; E. Eid, *La figure juridique du patriarche*, Rome 1963, 89-91.

<sup>126</sup> *Cleri Sanctitati*, c. 238 § 1. "Patriarcha ad normam can. 235 electus et inthronizatus plenum ius in officio obtinet firma § 3."

through confirmation; if this is denied, the newly elected one loses his rights to the office and the synod must elect another patriarch.

### 3.2. Synodal Election of Bishops

According to the undivided tradition of the Church, bishops and metropolitans were freely elected by the synods of each Church without the intervention of other Churches. The ecumenical councils and the important regional councils reserved the election of bishops exclusively to the provincial synods.<sup>127</sup> Wilhelm De Vries categorically states, "We do not know a single case of a direct appointment of a metropolitan or ordinary bishop by Rome that took place in the territory of the Eastern patriarchates in the first millennium."<sup>128</sup> Prior to the re-establishment of the patriarchates of the Eastern Churches that entered into full communion with the Catholic Church and the holding of their respective synods, bishops were elected in the provincial synods, taking into account the wishes of the clergy and the Christian faithful.<sup>129</sup>

In the Western Church too, the election of bishops was the right of the local Church. Pope Innocent I (401-417) urged that the election of bishops should be conducted according to the norms of Nicaea.<sup>130</sup> According to Pope Leo I (the Great, 440-461), it is the right of each local Church in immediate communion with other churches to elect the bishops.<sup>131</sup> In the Latin Church too, throughout the first millennium bishops were elected in provincial or regional synods according to the prescriptions of ecumenical councils in consultation with the clergy and

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<sup>127</sup> Ecumenical councils- Nicaea cc. 4, 6; cf. Chalcedon c. 28; Nicaea II c. 3; Provincial synods - Antioch, cc. 19, 23; cf. Sardica c. 5; Laodicea c.12; Carthage c. 12. For details, see P. Pallath, *Local Episcopal Bodies in East and West*, 53-62; D. Salachas, *Il Diritto canonico delle Chiese orientali nel primo millennio*, Roma-Bologna 1997, 119-133.

<sup>128</sup> W. De Vries, "La S. Sede ed i patriarcati," 321; cf. "The Origin of the Eastern Patriarchates and Their Relationship to the Power of the Pope" *One in Christ*, vol. 2, no. 1 (1966), 66; *Rom und die Patriarchate des Ostens*, 20; cf. also V. Parlato, *L'ufficio patriarcale*, 80-87; M. M. Wojnar, "Decree on Oriental Catholic Churches," in *The Jurist* 25 (1965) 202.

<sup>129</sup> Cf. J. Khoury, "La scelta dei vescovi nelle Chiese orientali," *Concilium* 6 (1981) 53.

<sup>130</sup> "Primum, ut extra conscientiam metropolitani episcopi nullus audeat ordinare (Dist. LXIV, c. 5); integrum enim est iudicium, quod plurimorum sententiis confirmatur: nec unus episcopus ordinare praesumat; ne furtivum beneficium praestitum videatur. Hoc enim et in Synodo Nicaena constitutum est, atque definitum." *Epistola 2*, PL 20, 471-472.

<sup>131</sup> Leo I, *Epistola 14*, PL 54, 673.

the people of God.<sup>132</sup> The popes intervened during this period only to safeguard the autonomy of the electoral synods from undue interference by emperors and kings.<sup>133</sup>

### 3.2.1. Election of Bishops and the Eastern Churches Received into Full Communion

Even in the second millennium in the Maronite and Melkite patriarchal Churches bishops were freely elected by the patriarchal synods in the spirit of the ancient canons. The name of the newly elected bishop was communicated to the Holy See for information.<sup>134</sup> The already cited Apostolic Letter *Reversurus*, promulgated by Pope Pius IX on 12 July 1867, also regulated the appointment of bishops in the Armenian Church.<sup>135</sup> According to *Reversurus*, the patriarchal Synod draws up a list of three candidates and submits it to the Roman Pontiff for appointment in a vacant eparchy. The Pope is free to appoint the new bishop from the submitted list or anyone he wishes if none of the candidates on the list is deemed worthy. The text reads:

Whenever a diocese of the said patriarchate becomes vacant, the patriarch should as soon as possible convene a synod of all the bishops of the same patriarchate; whereupon the patriarch and the bishops, having assembled in synod, should after mutual consultation, propose to the contemporary Roman Pontiff three suitable clergymen, that he may choose from among them one more worthy and suitable to fill the vacant episcopal see. We do not doubt, however, that the same bishops will strive to propose worthy and truly suitable men, so that we or our successors will never be forced to appoint another person to the office of the same apostolic ministry, even though he has not been proposed by them, in order to enhance the episcopal dignity and preside over a vacant church [...].<sup>136</sup>

After the selection of three ecclesiastics, all the acts of the Synod, together with their names, had to be transmitted through the Apostolic Delegate of the Holy See to the Congregation for the Propagation of the Faith for the Affairs of the Eastern Churches, which examined the

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<sup>132</sup> J.-M. R. Tillard, *L'évêque de Rome*, Paris 1982, 224; *The Bishop of Rome*, London 1983, 182; Y. Congar, "Le pape comme patriarche d'occident," 389-390.

<sup>133</sup> Cf. G. Ghirlanda, *Chiesa universale e chiesa particolare*, 530-533.

<sup>134</sup> M. Brogi, "Nomine vescovili nelle Chiese orientali cattoliche," in *Kanon* 7 (1985), 128; J. Khoury, "La scelta dei vescovi," 53-55 & 57.

<sup>135</sup> *Acta Sanctae Sedis* 3 (1867) 386-393; *Iuris Pontificii de Propaganda Fide*, vol. VI, 1, 453-458.

<sup>136</sup> *Acta Sanctae Sedis* 3 (1887) 392; *Iuris Pontificii de Propaganda Fide*, vol. VI, 1, 457-458.



names and submitted them to the Pope for appointment.<sup>137</sup> Practically, the same procedure for the appointment of bishops that was then common in the Latin Church was also applied to the Eastern Catholic Churches.

In the apostolic letter, the Pope also expressed his desire to extend the same procedure to all Eastern Catholic Churches:

And while we decide these things for the election of the bishops of the Armenians, we do not forget the other Patriarchates of the Eastern rite, for whom we will also take care to regulate this very important task of the election of bishops as soon as possible, as we have already publicly announced to our venerable brothers the Patriarchs of the Maronites and Melkites, and to the other Eastern Patriarchs currently residing in Rome.<sup>138</sup>

In the context of the conflicts between Pope Pius IX and the Chaldean Patriarch Joseph IV Audo (1848-1878) the same procedure for papal appointment of bishops was also extended to the Chaldean Catholic Church by the Apostolic Constitution *Cum ecclesiastica disciplina* of 31 August 1869.<sup>139</sup> The Roman Pontiff also appointed bishops in the Syrian and Coptic Churches according to the same procedure.<sup>140</sup> Of course, in the non-patriarchal Churches bishops were appointed directly by the Roman Pontiff.

### 3.2.2. Election of Bishops according to *Cleri Sanctitati*

The election of bishops according to *Cleri Sanctitati* is not treated comprehensively, but only some relevant points related to the theme.<sup>141</sup> The rigorous prescriptions of Pope Pius IX concerning the election of bishops were not fully incorporated into the Eastern legislation as found in the *motu proprio Cleri Sanctitati* promulgated in 1957, which provides two types of procedures for the election of bishops in patriarchal Churches. According to the normal procedure, after the preliminary preparations, the patriarch convokes a "synod for

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<sup>137</sup> *Acta Sanctae Sedis* 3 (1887) 392; *Iuris Pontificii de Propaganda Fide*, vol. VI, 1, 457-458.

<sup>138</sup> *Acta Sanctae Sedis* 3 (1887) 392; *Iuris Pontificii de Propaganda Fide*, vol. VI, 1, 459.

<sup>139</sup> Pius IX, *Cum ecclesiastica disciplina*, *Iuris Pontificii de Propaganda Fide*, vol. VI, 2, 34; *Pii IX Pontificis Maximi Acta, Pars prima*, vol. V, Romae 1871, 38-47.

<sup>140</sup> Cf. J. Khoury, "La sceltà dei vescovi," 56.

<sup>141</sup> For more information concerning the election of bishops according to *Cleri Sanctitati*: E. Eid, *La figure juridique du patriarche*, 138-141; M. Brogi, "Nomine vescovili nelle Chiese orientali cattoliche," 128-131; P. Pallath, *Local Episcopal Bodies in East and West*, 199-201.

election,” and the fathers assembled in the Synod freely elect the one (a single priest, not three) whom they deem worthy and qualified before the Lord above all others (c. 252 § 2). After the election the patriarch must immediately report the election to the Roman Pontiff for confirmation of the one elected (c. 253 §1). It is forbidden to reveal the name of the elected to anyone, including the elected himself, before the authentic notification of the confirmation (c. 253 § 2). If confirmation is denied, the only option is to convoke the Synod again and elect another person, because according to canon 392 § 2 bishops are freely appointed by the Roman Pontiff or, if lawfully elected, confirmed by him. Thus, this procedure discredits the patriarch and the Synod if the candidate is not confirmed by the Roman Pontiff. In short, according to this procedure, a bishop becomes a bishop not by election but by confirmation by the Roman Pontiff, and thus, the election becomes almost equivalent to proposing a candidate to the Bishop of Rome for the appointment. However, compared to the regulations of Pope Pius IX, an improvement was made; instead of three candidates for appointment, a single candidate could be presented to the Roman Pontiff for confirmation; the right of the Roman Pontiff to appoint a bishop, without the participation of the patriarchal Synod is not mentioned.

According to the second manner of election (c. 254 §§ 1-2), the Synod of Bishops, “in order to make provision for vacant eparchies more expeditiously,” may draw up a list of candidates, priests qualified for episcopate by secret ballot with an absolute majority. This list must be submitted to the Roman Pontiff for his approval. Once approved, the Synod of Bishops may elect a person to the episcopate from this list in the event of a vacancy or the erection of a new eparchy, without further intervention from Rome. The only obligation is to inform the Apostolic See that the election has taken place. This form of election, which appears in *Cleri Sanctitati* as a secondary method of expediting the appointment of bishops, seems more respectful of the right of the Synod of Bishops to elect bishops.

## Conclusion

Primacy and synodality are inseparable and closely interwoven, like the two sides of a coin. Therefore, synodality cannot be considered alone without touching on primacy. History shows that the development of the universal primacy of the Roman Pontiff with full, complete and supreme jurisdiction and the concentration of power in the Roman Curia led to the virtual disappearance of synodality in the

West and a significant decline in the Catholic East. Authentic and meaningful synodality could not be realized without a reinterpretation of papal primacy, a reorganization of central governing bodies, and a decentralization of power. The Second Vatican Council and the post-conciliar Church sought to initiate such a process and to strike a balance between primacy and synodality.